

CONTENTS

Frontispiece facing page (i)

Preface page iv

DIVISION OF COMMONTY IN SCOTLAND

List of plates vii

List of figures ix

The use of the eighteenth- and nineteenth-century
estate plans held by the Scottish Record Office
in a study of historical geography

Introduction by i

Chapter: Ian H. Adams

I. The plan collection in the Scottish Record Office 12

II. The commonty 21

Classification of common lands 29

Distribution of commonities 37

Function of rural commonity 45

III. Division of commonity

Prior to 1695 68

The Act of 1695 76

Procedure of division 80

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CONTENTS

17. Landscape and community	page 104
Frontispiece	facing page [i]
Preface	page iv
List of plates	vii
List of figures	ix
<u>PART I</u>	
Introduction	1
Chapters:	
I. The plan collection in the Scottish Record Office	12
II. The community	27
Classification of common lands	29
Distribution of commonities	37
Function of rural community	45
III. Division of community	
Prior to 1695	68
The Act of 1695	76
Procedure of division	80
The eighteenth century	86
The nineteenth century	96

PREFACE

IV. Landscape and commonity	page 104
Commonity and land utilisation	104
Population and division of commonity	112
Changes in landscape at division	115
V. The burgh common	123
Rural functions	126
Non-rural functions	130
Evolution of the park	136
VI. Conclusions	151
Glossary	158
List of cartographic sources	161
List of manuscript sources	162
Bibliography and abbreviations	164

AppendicesPART II

A Directory of Former Scottish Commonities

PART III

Division of the commonity of Hassendean

PART IVDescriptive List of Plans
in the Scottish Record Office

PREFACE

For many years the historical geographer in Scotland has been handicapped by the dearth of detailed source lists on which to base his research. Even great collections of manuscript plans, like those of the Scottish Record Office, lay unlisted. A major step forward occurred when the Scottish Record Office decided to employ a geographer to catalogue their collection of eighteenth and nineteenth-century estate plans which had been accumulating, from various sources, over the last century and a quarter. It was the author's good fortune to be invited to undertake this task which, through the passage of the last two and a half years, has turned into a labour of love. From this work emerged the realization that the rural landscape of lowland Scotland was of relatively recent origin and that much of it could be explained by detailed examination of plans such as I was in the process of cataloguing. The whole subject of the creation of the rural was beyond the scope of a thesis of this nature; thus I have restricted my analysis to the division of the former commonties and the influence this has had on the present landscape.

I wish to acknowledge my indebtedness to all who have been of assistance to me in the prosecution of this work. Especially, I must express my thanks for the kind and tactful supervision of Professor J. Wreford Watson of the Department of Geography, University of Edinburgh, whose time was provided ungrudgingly, although he held the onerous post of Dean of the Faculty of Social Sciences at the time. It was his initial encouragement that prompted me to embark on this field of research. To Mr John Imrie,

Curator of Historical Records in the Scottish Record Office, H.M. Register House, Edinburgh, my thanks are due for allowing me complete freedom to undertake this task whilst compiling the Descriptive List of Plans in the Scottish Record Office.

I must also put on record the kindness of my colleagues in the Scottish Record Office for making innumerable reports of documents throughout the collection: Dr Katharine Davies, Miss Elizabeth Tait, Miss Margaret Young, Andrew Anderson, George Barbour, John Bates, Andrew Broom and Dr Athol Murray. To Dr Grant Simpson I owe unlimited respect for his guidance and friendship that culminated in his reading my final draft. His assistance, scholarship and criticism have been received with gratitude. Also the invaluable help rendered to me by the staffs of the National Library, the Signet Library, the Royal Scottish Geographical Society, the archaeological section of the Edinburgh branch of the Ordnance Survey, has in no small way transformed this labour into a pleasant task.

Mrs Mary Young has given herself unstintingly in the typing and layout of this work. Mr Burt, master bookbinder in the Scottish Record Office, has bound all three volumes of this thesis. From Mr D. and A. Crossland I have received every assistance in preparing the many illustrations in this work. Working with these men and women I have learnt the meaning of the word craftsmanship and if the scholarship in this volume meets the same stringent standards as they uphold, I will rest satisfied.

Lastly, I must thank my wife who has borne the burden of silent hours of scholarship without complaint and whose diligent examination of my work has revealed many errors and inconsistencies.

2. Earliest surviving community plan I.H.A.	page 14
3. Rural scene in Orkney, 1769	19
Department of Geography, Field lands of Bengalhill	23
High School Yards, List of processes in Mackenzie	
University of Edinburgh,	27
Edinburgh.	
4. Community of Deane Muir, Fife	30
5. Plan of the scottald of Haroldswick, Shetland	31
6. Plan of the community of Lemondie of Falkland, Fife, 1815	32
7. Burial ground of Corahill, Ayrshire, by John Ainslie	33
8. Common green of Dreghorn, Ayrshire, 1789-90	34
9. Plan by William Panton, 1766, showing a loan	36
10. Shielings on the community of Ardgie Tenpound Land, Perthshire, 1829	49
11. The loan to the township of Tonnallienan, Banffshire, 1770	53
12. Earl pits on Lindean Common, Selkirk	56
13. Chronicle of iron ore quarries, Shetland	57
14. Duke of Hamilton's coal-pit beneath community of Reddingrig Muir	59
15. Community of Reddingrig Muir	59
16. Kelp manufacture in Orkney, 1769	60
17. Drive road passing through the community of Peddal, 1854	62
18. St Boswell's Fair road passing through community of Wilton	64
19. Act concerning the dividing of communities ... 1695	76
20. Commissioner's expenses at division of the community of the Links of Barry, 1801	82

LIST OF PLATES

23. Disputed areas on north side of the community of Gretna, 1768	page 83
Frontispiece. An Orcadian Common	facing page [i]
2. Earliest surviving commony plan, 1687	page 14
3. Rural scene in Orkney, 1769	19
4. Plan of infield-outfield lands of Bengalhill	23
5. Extract from list of processes in Mackenzie office	27
6. Commony of Drone Muir, Fife	30
7. Plan of the scattald of Haroldswick, Shetland	31
8. Plan of the commony of Lomonds of Falkland, Fife, 1815	32
9. Runrigs of Corshill, Ayrshire, by John Ainslie	33
10. Common green of Dreghorn, Ayrshire, 1789-90	34
11. Plan by William Panton, 1766, showing a loan	36
12. Shielings on the commony of Ardgie Tenpound Land, Perthshire, 1829	49
13. The loan to the township of Tommalienan, Banffshire, c.1770	53
14. Marl pits on Lindean Common, Selkirk	56
15. Chromate of iron ore quarries, Shetland	57
16. Duke of Hamilton's coal-pit beneath commony of Reddingrig Muir	59
17. Commony of Reddingrig Muir	59
18. Kelp manufacture in Orkney, 1769	60
19. Drove road passing through the commony of Feddal, 1854	62
20. St Boswell's Fair road passing through commony of Wilton	64
21. Act concerning the dividing of commonities ... 1695	76
22. Commissioner's expenses at division of the commony of the Links of Barry, 1801	82

23.	Disputed areas on northern boundary of the commonty of Gretna, 1768	page 83
24.	Advertisement for surveyor in Edinburgh Evening Courant, 1755	84
25.	Rough draft plan of the commonty of Hassendean showing valuations	84
26.	Commonty of Skyrescleugh, Dumfries	95
27.	Relationship between township, infield, outfield, head dyke and common grazing	104
28.	Allotments on the commonty of the Lomonds of Falkland, 1815	105
29.	Landscape of the commonty of Mundole prior to division, 1814	115
30.	View along the loan to the commonty of Chirnside	116
31.	Plan showing loan to the commonty of Chirnside, 1806	116
32.	Aerial photograph of part of the commonty of Coldingham, 1772	117
33.	Part of Alexander Low's plan of the commonty of Coldingham, 1772	117
34.	Gordon of Rothiemay's plan of Edinburgh, 1649	128
35.	The 'Milk Road' from the commonty of Smithy Muir to Stonehaven	129
36.	Rough sketch of Hawick Common	131
37.	Bow Butts on the South Muir of Kirriemuir, Angus, 1788	132
38.	Common Moor of Auchterarder, 1755	136
39.	Portrait of William Inglis on Leith Links	137
40.	Advertisement from Edinburgh Evening News, 23 Nov. 1966	138
41.	Glasgow in 1650 by Sir James Marwick	140
42.	Plan of Glasgow, 1764	143
43.	Map of the city of Edinburgh from Scots Magazine, 1759	146

LIST OF FIGURES

	facing page
1. Distribution of common greens in Scotland	34
2. Distribution of the place-name element 'loan'	35
3. Distribution of commonities in Scotland divided by Court of Session actions between 1695 and 1900	37
4. The areas in which the commonity was a form of land tenure and the 'commonity-void' zone	38
5. Commonities in Dumfriesshire	39
6. Commonities in Aberdeenshire	43
7. Commonities and drove roads in southern Scotland	61
8. Distribution of commonities divided before 1695	71
9. Commonity of Gladsmuir	72
10. Commonities and burgh commons in parish of Peebles	74
11. Diffusion of division of commonity 1695-1900	86
12. Rate of division 1695-1900	87
12a. Distribution of place-name 'common'	88
13. Regional variations of division - Dumfries, Angus, Caithness and Shetland	89
14. Regional variations of division - Midlothian, Perth, Aberdeen and Ross and Cromarty	90
15. Burgh muir of Edinburgh	146

As far as the geographer is concerned the principal hurdle to surmount has been the nature of the source material and its availability, or rather its unavailability. In the main, the

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1. M'Naught, D., Kilmaurs Parish and Burgh, Paisley, 1912, 258
 2. Hoskins, W.G., and Stamp, E. Dudley, The Common lands of England and Wales, London, 1963, xvi

INTRODUCTION

'In every old town and village, the history of the common lands is a subject of absorbing interest, not only to those directly concerned but to every one desirous of enlightenment on the various aspects of the land question and the drift of modern opinion regarding its ownership and latent liabilities. In some instances, these lands have come down intact from early times, while in others they have disappeared, leaving no trace of their locality, extent, or value, save what can be gleaned from nebulous tradition and profitless conjecture.'¹

This statement underlines the question, what happened to Scotland's common lands, a question that has been asked many times but never answered satisfactorily. The absence in Scotland of common land in the generally accepted sense has sometimes led to a somewhat curt dismissal of the question. 'It should perhaps be explained at this point that because of the accident of history Scotland has no common land as we understand it in England and Wales, and it is therefore not considered at all in this volume.'²

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2. Hoskins, W.G., and Stamp, L. Dudley, The Common Lands of England and Wales, London, 1963, xvi

documents have been those familiar to lawyer and historian, but rarely handled by the geographer. However intimidating they are, when approached by those accustomed to maps and plans they can be persuaded to yield up their information even to an untutored geographer.

The two viewpoints quoted emphasize the present stage of development in research into certain aspects of Scottish historical geography. The apparent lack of source material makes an all too easy excuse for avoiding the issues raised; this is especially so when a comparison is made with the abundant English sources. Yet Scotland lacks nothing in the way of sources: all that is needed is determination to assemble them. To find out the fate of Scotland's commonties it was necessary to assemble all the known sources relating to common lands: from the library the path led to plans; from plans to legal processes of the Court of Session; from processes to private records, mainly family muniments; and finally from private records to examination in the field. Thus three elements - library, archives, and field - provided the tools for this geographical study. No balance was possible between these three areas of study: the library yielded little, as only single chapters in two works have previously been written on the dividing of Scotland's commonties.¹

The first major breakthrough came during an examination of the Scottish Record Office's plan collection which yielded considerable numbers of plans made specifically for division of

1. See below, Introduction, 4-10 *Law of Scotland*, 19th edn, Edinburgh, 1895, 384

2. *Ibid.*

commonty. Here was evidence, not only of large numbers of commonties, but also of their location, size, boundaries, functions and schemes of division. However, it soon became clear that more evidence would be required to give body to the information shown on the plans. This was to be provided by the processes of the Court of Session which, in the opinion of the author, supplied the key to the problem of the fate of Scotland's common lands.

The use of the word commonty may be puzzling to those familiar only with English terminology. The word embodies two different concepts which, if understood, go a long way towards explaining their rapid disappearance from the Scottish landscape. A commonty, as a legal term relating to land tenure, was 'a species of common property - once highly important, now rapidly becoming extinct - held as an accessory of the private estates of the commoners' but whose shares were not demarcated.¹ Secondly, the commonty represented a specialised type of land use which was originally regarded 'as of value only for pasturage and other uses of the surface; but also carrying right to minerals'.² These uses of the surface, involving fuel, food and building materials, played a vital part in the subsistence-type agriculture that prevailed in Scotland until the eighteenth century. I have used the word commonty throughout to indicate common land that could be divided in Scots law. Other types of common land - burgh commons, Crown commons, common grazings and common greens -

1. Erskine, J., Principles of the Law of Scotland, 19th edn, Edinburgh, 1895, 384

2. Ibid.

could not be divided in the Court of Session, with the exception of Crown commons after 1829, and are not called commonties. This is a completely artificial convention, as contemporary writers used the words 'commonty' and 'common' at will. Yet there is justification for the distinction because the Act of Parliament allowing the division of common lands was entitled 'Act concerning the Dividing of Commonties'.¹

Perhaps the fact that Scotland had a separate legal system, which embodied a very simple Act enabling commonties to be divided cheaply and easily, is an accident of history. If so, I hope to show that from 1695 to about the end of the nineteenth century, Scotland 'accidentally' lost all its commonties!

Previous work on the subject is sparse indeed. Rankine, an eminent nineteenth-century lawyer whose book on The Law of Land-Ownership in Scotland is still the standard work on the subject, devoted a chapter to the legal aspects of division of commonty.² He pointed out that the commonty differs from other types of land tenure in Scotland in three ways: 'in mode or origin of its construction, in the manner of its enjoyment, and in the rules of division'.³

In a review of the possible modes of origin, Rankine strongly favours the idea that the feudal system recognised 'commonties' as a state of possession already subsisting beyond the memory of man, and too firmly rooted to be easily dislodged'.³ The

1. APS. 1695, cap. 69

2. Rankine, J., The Law of Land-Ownership in Scotland, 2nd edn, Edinburgh, 1884, 496-503

3. Op. cit., 498

commonty, as a system of land tenure, was thus allowed to continue after the establishment of the feudal system because of the crucial role it played in the subsistence agriculture of the time. This view was totally at variance with one put forward by Bell in his Principles some time earlier. In Bell's view commonties had been created after the feudalisation of the Scottish Lowlands. 'This particular right, usufruct in a common, arose at first from grants, made by feudal lords and proprietors to their feuars and tenants, of rights to pasture their cattle on the grazing grounds or wastes of the barony. Sometimes also by vicinage and custom, cottagers were suffered to establish a right of common over these wastes and pasture-lands. Neighbouring towns, too, and hamlets, permitted reciprocal encroachments on their pasture-ground, and so established commonty of pasture by mutual agreement and forbearance.'¹ Rankine demolishes this argument succinctly: 'all history shows that the tendency is the very opposite - for the powerful to encroach on the ancient rights of the weak'.

As for the 'mutual agreement and forbearance' on the part of larger communities,² the long history of riding the marches and the many disputes over rights to commonty negate this view. For example, disputes over the commons in which the burgh of Peebles had rights lasted nearly continuously from the twelfth to

1. Bell, G.J., Principles of the law of Scotland, Edinburgh, 1829, 1088

2. Bell's use of the words 'town' and 'hamlet' is not clear, but they are taken to mean town = burgh and hamlet = village and not in the Scottish sense town = hamlet

the nineteenth century.¹ Not only was litigation pursued in the Courts throughout this period, but fighting occurred on more than one occasion on the commons themselves.²

The question of the origins of Scotland's commonties does not come within the compass of this thesis, as it would involve a major piece of research in itself. However, the author believes that Rankine's hypothesis is more attractive than Bell's and that the origins do predate the feudal period when stress was on function rather than ownership. Nevertheless, documentary evidence goes back only to the twelfth century so that the contemporary picture of the common prior to the feudal period is not available. What seems to be implicit in these feudal charters is the continuation of the commonty at a time when the individuals' land holdings were so carefully documented. The common ownership of land would have been a careless innovation, fraught with potential discord, had it not been a long-recognised method of using the peripheral areas. The fact that encroachments could be made with impunity up to the first decades of the eighteenth century shows that these lands possessed little value in the eyes of the encroacher's neighbours. As the century wore on encroachments were increasingly challenged and many commonties were divided to prevent any recurrence.

On the manner of enjoyment (i.e. function) of a commonty Rankine had little to say. 'In regard to the enjoyment of the

1. Buchan, J.W., History of Peebles (3 vols), 1925-7, vol. ii, 218-88

2. Op. cit., 222-8

commonty, the same rule of veto against innovation applies as holds in respect to other common ownership. Thus "the Court were of opinion that, in the case of a commonty, the general rule was melior est conditio prohebentis ... as an ordinary use one joint proprietor may be entitled, without consent of the other, to shoot on the commonty himself, or even gratuitously to grant permission to his friends to do so; but that a grant of liberty to shoot, made by lease for a rent ... was not an ordinary use of the commonty, and therefore it was not effectual without express consent of both joint proprietors".¹ The most important, or as he puts it 'natural, and usual' use of the commonty was for pasturing of sheep and cattle which were wintered on the commoner's private property. Other functions mentioned included the privilege of taking feal, fuel and divot, building of shielings, liberty to shootings, quarrying of stones and mining of minerals.

Obviously some stress is laid on the method of division as this work, by a lawyer for lawyers, was primarily intended to clarify the contemporary state of land ownership in Scotland. However, this does not excuse the oversight of previous legislation for division of commonty prior to 1695. 'No machinery existed at common law capable of extricating the complicated rights and interests of the commoners and servitude-men ...

accordingly, the statute 1695, c.38 was passed, concerning the complaints of the kind, and to prescribe the most equitable way of division ...' (See below, Chapter III, 70).

2. Johnston, T., The History of the Working Classes in Scotland.

1. Campbell v. Campbell, 24th Jan. 1809, F.C.

dividing of commonalties.¹ Notwithstanding this error, Rankine provided the most important insight into the legal aspects of division of commonalty. It was left to an historian of intensely political views to make the next, and only other, foray into the subject of the division of the common lands of Scotland.

Before Thomas Johnston became a professional politician he wrote a pioneering work The History of the Working Classes in Scotland in which he included a chapter entitled 'The Reiving of the Common Lands'.² This single chapter is the only non-legal examination of the division of Scotland's common lands. Not that it was so profound, complete, objective or thorough as to preclude further examination: it was a chapter bristling with anomalies. Johnston's use of the picturesque word 'reiving' gives some indication of his political commitment. His indignation boiled over to scald his historical judgement. Facts are marshalled to sustain a thesis and not for enlightenment. Consequently, his abundant source material, which is not too well documented, did not receive the analysis it deserved.

1. Rankine, J., The Law of Land-Ownership in Scotland, 2nd edn, Edinburgh, 1884, 501: he apparently ignores APS. 1647, cap. 430, 'Complaint by heritors in several shires that their neighbours make use of the commonalties, and refuse to allow them to be divided; remit to the Lords of Session to decide complaints of the kind, and to prescribe the most equitable way of division ...' (See below, Chapter III, 70).

2. Johnston, T., The History of the Working Classes in Scotland, Glasgow, 1929, 154-81

To Johnston the working man was robbed of his commons by the landowning minority. To a certain extent, especially in the case of burgh commons, this was true, but to see the division of Scotland's commons solely in terms of rich robbing poor is to ignore the fundamental changes which occurred in agriculture in the eighteenth century. The commonry, both in the system of land tenure and in land use, was inefficient when the new agricultural standards were applied. Both cottage industry and subsistence farming were exposed to the cold winds of commercialism. The egalitarian runrig system, that had so much appeal for Johnston, did not spell freedom for the individual farmer, but thralldom to his inefficient neighbour.

On the other hand, Johnston's criticisms of those responsible for the dissipation of the burgh lands are hard to refute. His many examples of councils' peculations, culled from the Reports of the Commission into the state of Municipal Corporations in Scotland of 1835 cannot be explained away by changing economics.¹ The rural-economy of the town did disappear by the end of the eighteenth century, but as the commons had been granted to provide an income for the town, changing functions should have spelt increasing income. Yet this was rarely the case. For example, in Aberdeen 'fishings worth, in 1819, a rental of £10,000 were bringing to the town in 1833 only £27 7s 8d'.²

1. MCR. (Local) = Municipal Corporations (Scotland) Local Reports (3 vols), London, 1835

2. Op. cit., pt. i, 14

Johnston's most important contribution lay in his recognition of the wholesale division of Scotland's commons. The fact that he saw this wholly in terms of a class struggle is quite unimportant in the light of this achievement. Class attitudes towards division did differ, but not as far as Johnston believed.¹ The peasant farmer was conservative, as he still is, but many of the subsistence tenant farmers welcomed the chance to earn money wages offered by the enclosure movement. However, once the initial work of clearing the fields of stones, digging ditches, planting hedges and shelter belts, building dykes and laying drains was over, the labourer no longer had his arable patch and common to fall back on and he was forced to seek employment in towns or emigrate. 'In one cellar room he found two families from a Scotch country district; soon after their removal to the city [of Edinburgh] two of the children had died, and a third was dying at the time of his visit.'² The bulk of the people thrown off the land were tenants enjoying common rights through their landlords' legal right. As long as the law of Scotland required documentary evidence for a right to the common, no amount of common usage constituted a legal right. The cottars in the village of Aberlady had from time immemorial used Aberlady Muir as a common but even armed attack could not substantiate their case.³

1. See below, Chapter IV, 108-110 3. See below, Chapter IV, 110

2. This quotation taken from Johnston's History of the Working Classes in Scotland (p.291), in a chapter characteristically called 'The Massacre', is an example of his use of the emotive quotation. Although he did not intend it so, it offers excellent evidence of the drift from country to town.

These two authors approached the subject of the division of Scotland's commons from two very divergent viewpoints - legal and political. There is a third - geographical - which allows for a different assessment. Many questions can be asked: what is a common in Scotland? Can commons be classified? What was their distribution pattern? What was their function? How far had division gone before 1695? What happened after the Act of 1695 (for the dividing of commonties) was passed? What influence had commonties on the landscape, both before and after division? Did division of commonties have an influence on the distribution of population? What were the social attitudes towards division? What happened to towns' commons?

With the aid of the plan collection of the Scottish Record Office, the author endeavoured to answer these questions. The purpose was twofold: first, to throw some light upon the fate of Scotland's commons; and secondly, to illustrate the source of knowledge that is stored in these unique, strange and often beautiful plans. That their worth has been recognised only after two hundred years is but one of the surprises in store for the modern scholar.

liberal sprinkling of architectural, industrial and railway plans. The bulk of the plans in Register House record the changing landscape of Scotland between 1750 and 1850. Only a handful of plans are dated earlier than 1750, whilst after 1850 the Ordnance Survey provided complete national coverage and satisfied the bulk of the market for large-scale plans.

1. The author has published parts of this chapter in the introduction to the Descriptive Catalogue of Plans in the Scottish Record Office, vol. 1, Edinburgh, 1986, and in a forthcoming article on 'Large-scale Manuscript Plans in Scotland', due to appear in the Journal of the Society of Architects October 1987.

CHAPTER I

The plan collection in the Scottish Record Office is important in recording landscape in detail, and tends to reflect the economic changes of the period.

The Scottish Record Office, H.M. General Register House, Edinburgh, possesses one of the major collections of manuscript plans in Scotland, at present totalling approximately 10,000 items.¹ Of the two main classes, the Sheriff Court Plans, although extensive and important, are mainly of railways and other nineteenth-century public utilities. The class known as Register House Plans (RHP.) is of a much more varied nature. It seems to date from about 1849 when bulky plans were withdrawn from Court of Session processes, then in the course of re-arrangement, in order to be given the benefit of specialised storage. The class has been continued for this reason and in recent years large quantities of plans have been added to it, not only from Court processes but also from such sources as records of government departments and collections of private archives, mainly family muniments, deposited in the Scottish Record Office. Most of the plans are of a topographical nature, but there is a liberal sprinkling of architectural, industrial and railway plans. The bulk of the plans in Register House record the changing landscape of Scotland between 1750 and 1850. Only a handful of plans are dated earlier than 1750, whilst after 1850 the Ordnance Survey provided complete national coverage and satisfied the bulk of the market for large-scale plans.

1. The author has published parts of this chapter in the introduction to the Descriptive Catalogue of Plans in the Scottish Record Office, vol. i, Edinburgh, 1966, and in a forthcoming article on 'Large-scale Manuscript Plans in Scotland', due to appear in the *Journal of the Society of Archivists* October 1967.

Historical background

The availability of large-scale manuscript plans, important in recording landscape in detail, tends to reflect the economic state of a nation. In Scotland the development of large-scale cartography took place in the eighteenth century, a fact which tends to reinforce the theory of economic causation. For in that century, the impact of the agricultural revolution had a more profound effect on the landscape of Scotland than was the case, for example, in England. The rural landscape was totally remade with such rapidity that even the casual observer could note that 'agriculture has advanced greatly within these few years; and the face of the country begins to change rapidly'.¹ Improvements in the surveyor's art in Scotland were partly a result of increased demand but also of increased experience: in England a similar movement had taken place in the sixteenth century,² but its influence had not extended north of the Border.

Only a single indigenous sixteenth-century plan is represented in the Scottish Record Office collection. However, English surveyors of that period, although unwanted and uninvited at the time, did record some Scottish landscape. Invasions, led by the Earl of Hertford in 1544, 1545 and 1547, brought in their train considerable military intelligence

1. OSA. = The Statistical Account of Scotland (21 vols, 1791-9), Sir John Sinclair (ed.), i, 451

2. Taylor, E.G.R., 'The Surveyor', Ecn. Hist. Rev., xvii (1947), 121-133; Darby, H.C., 'The Agrarian Contribution to Surveying', Geog. Journ., lxxxii (1933), 529-35

activity and several plans of towns and forts, notably in the Lowlands and Borders, survive as the earliest large-scale views of Scottish towns.¹ In the same campaign a view of the city of Edinburgh under siege gives us our earliest plan of the city.² A military report on the West March and Liddesdale, prepared and illustrated by an English official between 1563 and 1566, contains several large-scale plans of castles and towns, (1695), including Caerlaverock, Kirkcudbright and Annan.³

The absence of large-scale plans in Scotland continued throughout the seventeenth century. The few examples that are known, dating from the closing years of the century, are simply crude diagrams similar to those made in England nearly two hundred years earlier. Significantly, they record a division of commonty (Plate 2).⁴ Lack of demand may partly explain their

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1. Belvoir Mss. Misc. 36 maps 21 and 120, Mss. letters vol. 11, folios 54-65 (photocopies RHP. 6075)
 2. British Museum Cotton Mss., Augustus I.ii 56. Copy in Royal Scottish Geographical Society's Early Views and Maps of Edinburgh 1544-1852 (1919), 316
 3. Armstrong, R.B., The History of Liddesdale, Eskdale, Ewesdale, Wauchopedale and the Debateable Land, Edinburgh, 1883, appendix lxx
 4. RHP. 3836; SRO. Clerk of Penicuik muniments GD.18/1332-1369
-

Plate 2. The earliest surviving plan of a commonty, dated 18th April 1687, made for the division of the commonty of Penicuik (RHP. 3836)

'18 April 87 I surveyed that piece of moore is common to my tennents with Preston Ja: & Jo: Tomsons, J: Sympsone, Will Hyslope, John Frisell in Courla, Robert Dewer, Jo: Porteous, Ge Pennycook, Will Wodde, Da: & Alexr Drybrughs, in order to devyde the samen amongst them and myself & this bounded beginning at A that land of the blackmyre ...'

absence. It is true that transactions in land and heritable property were systematically recorded in the Register of Sasines from 1617,¹ and even earlier in the Notarial Protocol Books, but lawyers relied on written descriptions of lands and boundaries for purposes of registration, and it was not until the late seventeenth century that Acts of the Scottish Parliament for straightening of marches (1669), consolidation of runrig (1695), and division of commonry (1695) provided compelling legal reasons for making of plans. Again, there was little agricultural improvement to require plans, for the traditional infield-outfield system remained unchanged, in form if not in spirit, until the eighteenth century.² Whatever the cause, Scotland entered the eighteenth century with no tradition of producing large-scale plans and ill-prepared, in this respect at least, for the momentous changes ahead.

Early in that century stimulus for making plans came from two sources. First, increasing contact was made with England after the Union of 1707 and more Scottish landowners enjoyed views of an ordered rural countryside. Some of them imported English surveyors in an effort to emulate their English neighbours. The Duke of Buccleuch, in 1718, employed an Englishman called

1. Livingston, M., A Guide to the Public Records of Scotland, Edinburgh, 1905, 166-81

2. Third, B.M.W., 'The changing rural geography of Scottish Lowlands 1700-1820: a study of changes in landscape and economy as revealed for certain regions, by contemporary estate plans and papers and examples of the enduring effects. A critical selected bibliography of estate plans.' Ph.D. Thesis (1953), University of Edinburgh

Laud to make a comprehensive survey of his lands in Liddesdale.¹ Again, in 1726 Thomas Winter, an English surveyor, was brought to Aberdeenshire by Sir Archibald Grant of Monymusk to help in the consolidation of the runrig lands on his estate.² Their influence seems to have been local, but the Winter family established a strong cartographic tradition in the North-east. Secondly, there emerged a native school, drawing in the first instance upon such of the parochial schoolmasters who possessed the basic skills of mathematics and geometry. After about 1730, proprietors increasingly resorted to the Court of Session to establish exclusive right of property over land held in co-proprietorship, thus providing a stimulus for local plans. The movement started mainly in Dumfriesshire, where one of the local schoolmasters, Charles Mercer, was commissioned to make plans for the division of the commonties of Comlongon (1730), South Common of Lochmaben (1734), Hoddum and Ecclefechan (1738), Upper Dryfesdale (1738), Heck Bog (1739), Rutherford (1741) and Barkerland (1751).³ In Peeblesshire, William Oman combined the two professions, schoolmaster and land surveyor, and he was occasionally employed as the surveyor in a division of commonty.⁴

The repercussions of the 1745 Jacobite Rebellion on Scottish topographical mapping were at the same time profound

In order to carry out these improvements they commissioned

1. Buccleuch Mss. National Register of Archives (Scotland) Survey 0001

2. Hamilton, H., 'Selection from Monymusk Papers, 1713-1755', Scot. Hist. Soc. (1945), lxix

3. See 'Directory of Former Scottish Commonties'

4. Ibid.

and superficial. In 1747 William Roy, then a civilian employed by the Board of Ordnance, began a survey which was ultimately to cover the whole of Scotland, except for the Western Isles. This gave Scotland a survey with national coverage at a single scale of 1,000 yards to an inch. Unfortunately, it appears to have had comparatively little influence on the production of large-scale plans in Scotland, for it lay forgotten in London until the end of the century. It was not until Arrowsmith published his Map of Scotland in 1807, based largely on Roy's survey half a century earlier, that this material was generally available.¹ Also the cartographic skills of those engaged on the survey were lost completely to Scotland when the military surveyors were posted elsewhere.^{70 to 1828 maps and plans flowed}

When the Rebellion collapsed in the Spring of 1746, a large number of estates in Scotland, belonging to those who had been implicated in the affair, were forfeited to the Crown by the attainder for treason of their owners. In 1752 these estates were annexed to the Crown by an Act which was directed primarily toward improving social and economic conditions throughout the Highlands and Islands.² Commissioners were appointed in 1755 to manage the estates and for the next thirty years they carried out widespread improvements in agriculture and afforestation.³ In order to carry out these improvements they commissioned

1. SRO. Forfeited Estates Papers E.746/78; 169. E.787/12; 14

1. Thomson's Atlas of Scotland, dated 1831, was accompanied in the following year by a memoir which gives a detailed account of Roy's survey.

2. 25 George II, c. 41

3. SRO. Forfeited Estates Papers

surveys of all the estates. The demand for plans from this source provided economic inducement for surveyors to settle in the Highlands, an area that otherwise could not have supported such a large body of skilled men. For example, Peter May, a land surveyor in Aberdeen, was extensively employed by the Commissioners from 1757 to 1766,¹ whilst at the same time he carried out many surveys for local proprietors, including James Grant of Grant² and the Duke of Gordon.³

In the latter half of the century a new type of surveyor emerged, professional and competent, who began to survey the great estates, both in the Highlands and Lowlands. One of these new men, John Ainslie, soon established himself as the foremost surveyor in Scotland and from 1770 to 1828 maps and plans flowed from his prolific pen (see Plates 9 and 10). It was during this period that the Scottish landscape changed most: the Scottish landowner eagerly took up the new agricultural techniques, but in order to do so he had to reorganise the outmoded infield-outfield system.⁴ Land surveyors were engaged not only to make plans of the improvements but also to plan the scheme of improvement itself. They held a position of trust which appears to have been discharged honourably and were in such demand that they were even tempted to give up the profession to take up

1. SRO. Forfeited Estates Papers E.746/78, 169, E.787/12, 14

2. SRO. Seafield muniments GD.248/178/2

3. SRO. Gordon Castle muniments GD. 44/43/14

4. Handley, J.E., The Agricultural Revolution in Scotland, Glasgow, 1963



Thin Soil
A. R. F. P.
A. 1. 28. 1770

A. R. F. P.
103.2 2A 1770

F A R M

O F

*A Rustet Calcare Soil not
very deep. But pretty Fertile*

A. R. F. P.
M. 3. 21. 1770



high Banks



estate management. A letter from Peter May to James Grant of Grant in 1767 records the former's reluctance to give up surveying: 'My Lord Findlater has for some years bygone been making me offers to settle with him and my business at Cullen last time was to that purpose. I gote it put off there, but I have a letter from his Lordship last post which I suspect must nail me down. The only joy I have is that my charge is to be his Murray Estate, and my settlement to be at Elgin, but I need not say his Murray Estate, for his Lordship insists on my dividing and valuing his other lands as they fall out of lease and that I shall give up entirely the business of surveying land as I do at present.'¹

This pragmatic evolution of Scottish large-scale plans produced a school of cartographers who had little time for the traditional cartographic embellishments. Their plans were usually clean and simple: plans that were the products of functional minds for functional times. At times this is rather unfortunate, for small illustrative scenes, as were often used in English estate plans, provide valuable information as to the material culture of the age. William Aberdeen was one of the few Scottish surveyors to decorate his plans in such a manner (Plate 3). The expansion of plan production at the end of the eighteenth

1. SRO. Seafield muniments GD.248/345/5

century, due to the Agrarian Revolution, increased in momentum in the nineteenth century, partly under the stimulus of the developing Industrial Revolution. Technology was being applied to agriculture, industry and mining; the country town was being transformed into the industrial city with an appetite for rural fringe land; and distance was being broken down by improved communications. All these developments are reflected in the plans of the time.

It was the building of turnpikes, docks and railways that marked the significant point in the history of the surveying profession. Surveyors were not only surveying but also effectively planning complex engineering projects, and this foreshadowed an essential change in the profession. The end of the private land surveyor came with the establishment of the first Ordnance Survey teams in Scotland after 1840, when six counties - Midlothian, Fife, East Lothian, Kinross, Kirkcudbright and Wigtown - and the Island of Lewis were surveyed at the Six-Inch scale before disagreement over scales brought the survey to a halt in 1852.¹ After that date it was agreed that cultivated areas be surveyed at 25-Inch scale and the rest at Six-Inch. Little scope was left to the highly individualistic cartographic craftsman. The public found the new maps and plans more easily obtainable, more accurate and, most important of all, less expensive. The topographical surveyor, now a member of a redundant profession,

1. Close, Sir Charles, The Early Years of the Ordnance Survey, Chatham, 1926, 156; Harley, J.B., The Historian's Guide to Ordnance Survey Maps, London, 1964, 42-50

was forced to make the rapid transition to civil engineer or architect.

Thus the bulk of Scottish manuscript large-scale plans were produced in the century 1750 to 1850, which marks the rise of Scotland from an underdeveloped country to a highly industrialised society. It was also during the same period that the Scottish commonty disappeared, making way for a more efficient use of the land in tune with the temper of the time.

Division of commonty and plans

In Scots law plans are allowed to be founded on as evidence when distinctly authenticated and sworn to, thus: 'Dumfries 16th July 1766. This is the plan of Broomhills Commonty made by me John Tait, land measurer at Lockerbie, and referred to in my oath emitted of this date before John Goldie of Craigmuir, Esq., one of the Commissioners from dividing the said Commonty. John Tait. Jo. Goldie.'¹ They are not, however, properly evidence of themselves; they are rather adminicles, explanatory and illustrative of other proper evidence.² All division of commonty processes had at least one or more plans to show the boundary, valuation lots and scheme of division. Whether these plans have survived is largely a matter of chance: many were bulky and were stored away from the processes, others were taken into the field for the division and were lost, finally some were sent to the

1. RHP. 5 (see Directory, 81)

2. Watson, G. (ed.), Bell's Dictionary and Digest of the Law of Scotland, 7th edn, Edinburgh, 1890, 806

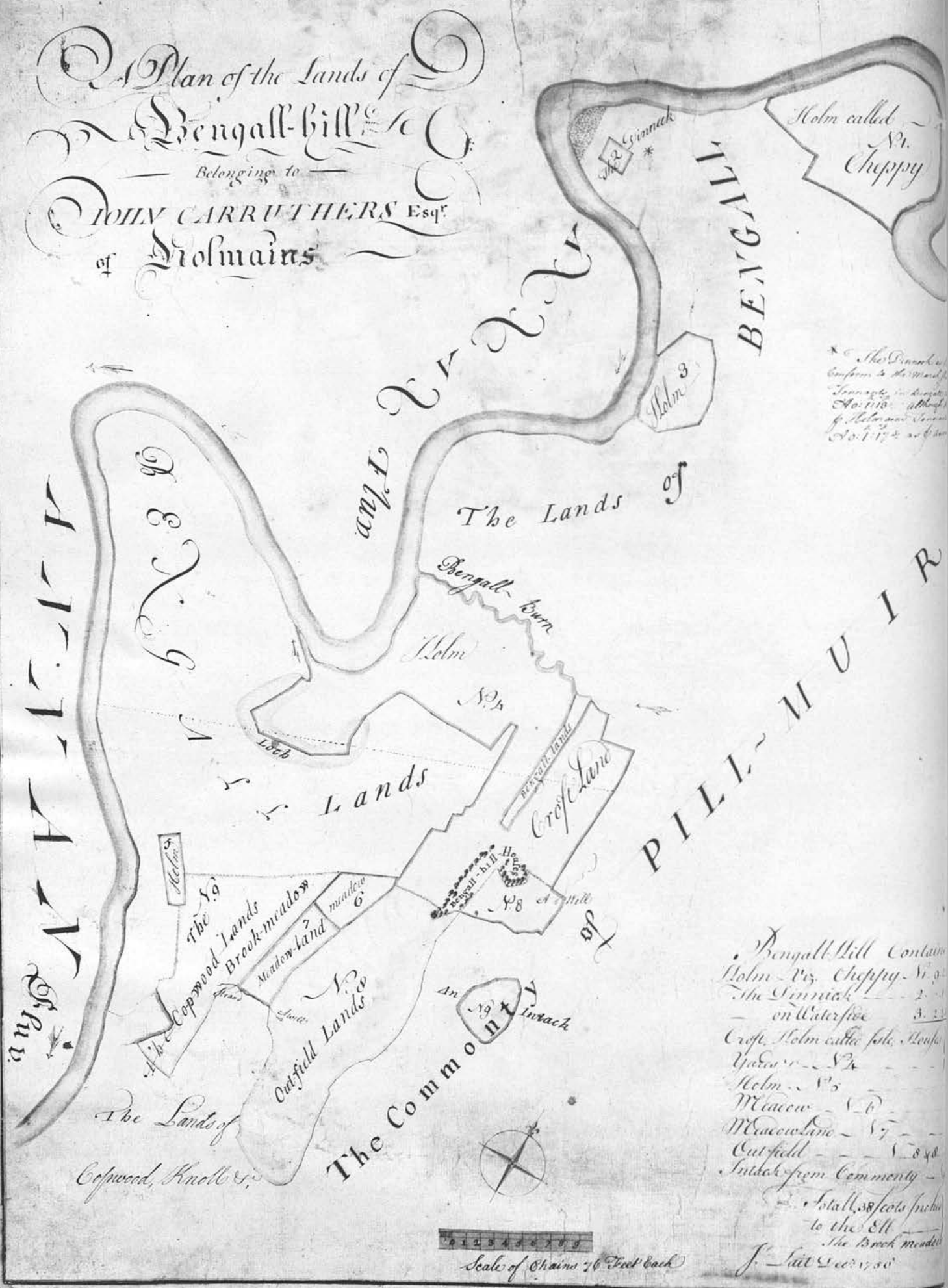
local Sheriff Court so that any dispute arising during or after division could be settled locally. Notwithstanding these vicissitudes many division of commonalty plans have survived.

Since the central repository for Court of Session records is the Scottish Record Office, all processes of division of commonalty, in theory at least, should be found in Register House. At the same time, the plans, which were such an important part of the process, should also be found in the Register House collection. Of the known plans relating to division of commonalty (i.e. noted in the Directory) some 128 or 22% are missing. Of the remaining 78% some 445 or 77% are in the Scottish Record Office collection and a mere 1% are housed elsewhere. In the long run many of those classified as missing will turn up in various family muniments or collections in solicitors' offices. Through the reports of the National Register of Archives (Scotland), which is housed and staffed by the Scottish Record Office, division of commonalty plans have been discovered which have been divorced from their process since the time of division. The division of Mistylaw Muir, Lochwinnoch parish, Renfrewshire,¹ is a good example of a planless process in the Scottish Record Office being reunited with its plans. In 1823, when the process was extracted, all the plans were dispersed: in July 1964 some papers and plans from the legal firm of Messrs J.A. Campbell and Lamond were deposited in the Scottish Record Office and amongst them was a plan made for the division of Mistylaw Muir.²

1. See Directory, 207-8

2. RHP. 5300

A Plan of the Lands of
 Bengall-hill
 Belonging to
 JOHN CARRUTHERS Esq^r
 of Holmains



* The Dinnoch
 Confirms to the March
 Township in Bengall
 Holmains 17th
 of Holmains 17th
 17th 17th 17th 17th

Bengall-hill contains
 Holm - 1/2 Chappys - 1/2
 The Dinnoch - 1/2
 on Waterfree - 3/4
 Croft Holm called the Holm
 Yards - 1/2
 Holm - 1/2
 Meadow - 1/2
 Meadow Lane - 1/2
 Outfield - 1/2
 Inland from Community -
 Total 38/100 parts
 to the Ell
 The Brook meadow
 J. - 17th 17th 17th 17th

Only three months later another plan of the same commonity turned up amongst documents deposited by another legal firm, Messrs Todds, Murray and Jamieson.¹ Another fruitful source for filling in the gaps is the Union Catalogue of Large-scale MS. plans of Scotland which is housed in the National Library of Scotland. Set up only in 1964, it is a central index of all large-scale plans in Scotland. From this catalogue, references were obtained to missing plans of the commonity of Orphir in Orkney² as well as examples of common greens in Roxburghshire.³

Other plans, not made primarily for division of commonity, provide at times vital clues to the location of the boundaries of commonities for which the plans have been lost. In 1778 William Bell, land surveyor, made a plan of the commonity of Pilmuir,⁴ which was subsequently lost. However, some years earlier John Tait, a land surveyor in Lockerbie, had made a plan of the lands of Bengallhill, which lay immediately to the west of the common, showing a part of their mutual boundary (Plate 4).⁵ Other

1. RHP. 3632

2. NLS. Johnson Bequest (MS. acc. 4065)

3. NLS. Minto muniments (Maps 1, 3 and 5)

4. See Directory, 72

5. RHP. 1742

Plate 4. Plan of the infield-outfield lands of Bengallhill, Dumfriesshire, that shows in passing part of the boundary of the commonity of Pilmuir (RHP. 1742)

cartographic sources include published county maps by Ainslie, Knox and Thomson; early Ordnance Survey series, especially first edition Six-Inch (1850-60); and the Ordnance Survey Object-name books which give detailed information of all place-names appearing on the early series.¹

Court of Session Processes

As already mentioned, the Court of Session processes are housed in the Scottish Record Office. In theory every process relating to division of commonalty since 1695 should be found in these records. Many of the documents, however, were lent out to legal firms and have never been returned, so that only the barest of information is available from the surviving documents, usually the summons but sometimes only an inventory. An example of the former can be found in the division of the commonalty of Muir of Dalherrick, Cluny parish, Aberdeenshire; and of the latter, the commonalty of Scone, Scone parish, Perthshire.

The legal process has formed the very basis of this enquiry into the fate of the common lands of Scotland. To divide a commonalty, other than one belonging to a royal burgh or the Crown, it was necessary to bring an action before the Court of Session based on the Act of 1695.³ Thus from this time onwards, the

1. See full list of cartographic sources on page 161. The Object-name books of the Ordnance Survey have been microfilmed by the Scottish Record Office and can be studied at Register House (RH. 4/23)

2. See Directory, 4 and 213

3. See below, Chapter III, 76-80

documents making up these processes were preserved in a central repository which was later to become the Scottish Record Office. Indexes were made up listing the processes under the pursuer's name. It is fortunate that the clerk also entered an abbreviation indicating the nature of the process (Plate 5). For this alone provided a key by which the processes relating to division of commonalty could be isolated and compiled into a directory. Assistance in locating processes was obtained from two other sources: first, the collection of printed papers in the Signet Library, in which copies of printed documents in processes have been lodged, provides a first line check if the process is missing from Register House.¹ Secondly, published decisions of the Court

11th August 1774.

Dec't Finlayson	q Finlayson	J.C.
Dec't Adj: in Imp: Anderson	q Rolland	J.C.
Dec't Ord Grant to be expunged the Roll of Invernesshire		J.C.
Dec't Adj: Friction	q Conner	L.G.
Dec't Adj: Duff	q Petrie	L.G.
Dec't Div: of Com: Buncle	q The Marquis of Annandale	L.G.

Plate 5. Extract from index to extracted processes in Mackenzie Office, 11th August 1774, showing a division of commonalty, Buncle v. The Marquis of Annandale. (See Directory, 66)

1. Session papers in Signet Library, Edinburgh (74 vols),

of Session give a precis of certain cases of legal interest.¹

Documents from missing processes often turn up in family muniments or papers in solicitors' offices, so that through the Directory, plan, process and other documents may be reunited.

Thus these two classes of records, plans and Court of Session processes, held the answer to the main question posed in this enquiry. From them could be assembled a list, as comprehensive as survival will allow, of all the commonities of Scotland with details as to their location, size and date of division (see introduction of Directory). At the same time, witnesses' depositions give an intimate picture of the role of the commonity in the life of rural Scotland, a facet which, but for these legal processes, would have remained obscure.

The concept of the common is well defined in Scottish law: 'A common, or commonity, is land possessed in common by different proprietors; - it may even, from the terms of the statute, comprehend pasture ground, which though belonging in property to one person, has been pastured on by several; so that although there are no common proprietors, there are several rights to servitude over the subject.'² These 'rights to servitude' must not be confused with 'common rights' in the English sense: unwritten rights of servitude had no place in Scotland and,

1. Stamp, L.D. and Roskine, W.G., The Common Land of Scotland and Edinburgh, 1867.

1. Morison, W.M., The Decisions of the Court of Session (24 vols), 1801

CHAPTER II

The Commonty

Common land in Scotland

The history of the common lands of Scotland took a totally different path from that of the rest of the British Isles. In England and Wales there are one and a quarter million acres of land classified as common.¹ Yet in Scotland there are virtually none, although the barren highland conditions which make up the bulk of England's commons, are abundant. This paradox is the result of the forces of two totally different legal systems working upon the landscape. The common law of England tended towards status quo and the protection of common rights; whilst the Romanised law of Scotland created a situation in which lands under co-proprietorship were easily divided.

The concept of the common is well defined in Scottish law: 'A common, or commonty, is land possessed in common by different proprietors, - it may even, from the terms of the statute, comprehend pasture ground, which though belonging in property to one person, has been pastured on by several; so that although there are no common proprietors, there are several rights to servitude over the subject.'² These 'rights to servitude' must not be confused with 'common rights' in the English sense: unwritten rights of servitude had no place in Scotland and,

1. Stamp, L.D. and Hoskins, W.G., The Common Lands of England and Wales, London, 1963, 3

2. Bell, W., Dictionary and Digest of the Law of Scotland, Edinburgh, 1838, 1019

unless a servitude could be proved by documentary evidence, there could be no recourse to law. This is ideally illustrated in the division of the Hill of Wick, a commony situated immediately to the west of the town, in which only 13 out of 58 feuars in the burgh of Wick could substantiate their claim to servitude by sasine or charter.¹

The titles of the proprietors' lands had to bear certain phrases in order to substantiate their rights to the commony. If the words in the titles were, 'with parts, pertinents, and common pasturage' or 'pasturage with cattle and privilege of commony' it was only a right of servitude upon the commony; but 'with parts, pendicles, and pertinents' or 'mosses, commonties, parts, pendicles, and pertinents' or 'with the commony' it was a right of property.² There was no exception in law to producing documentary proof of possession. Only in one process were the documents of one of the defenders not produced: Robert Scott of Horsleyhill was abroad in the army when a process of division of the commony of Hassendean, in which he had interest, was raised. But it was decided that 'it being in proof and all the parties concerned unanimously agreeing that his interest in the common is uncontraverted and that he is in possession of the tenements when his interest flows, the commissioners therefore presume they may hold Col. Scott's titles as produced'.³

1. Directory, 60

2. Barclay, H., A Digest of the Law of Scotland, Edinburgh, 1852, vol. i, 142

3. Division of commony of Hassendean, Part III, 88-91
Crown had interest. Other pieces of land, not necessarily

Encroachments on the commonalty were quite prevalent and, up to the middle of the eighteenth century, went largely unchallenged. The commonalty of Hannah, Cummertrees parish, Dumfriesshire, was reduced to a mere 126 acres, from a formerly much greater area, and would have disappeared completely without recourse to law had not the local minister raised a summons of division of commonalty to make sure that he, at least, received a small share.¹ On certain commonalties, for example Hassendean, neighbours had tacit agreements that the parts of the commonalty adjacent to their lands would be grazed by them exclusively, and these were known as head rooms.² Although they had no legal basis the head rooms had been in existence a considerable time before the division took place in 1763.

Classification of common lands

The common lands of Scotland fall into nine categories and form a classification without ambiguity. The main criterion used in making this classification was whether the land fell within the compass of the Act of 1695 or not. The Act specified three types of land: the first was that which could be divided and formed the major category of common land in Scotland. The second and third categories were exemptions from the Act and included commons belonging to the royal burghs and those in which the Crown had interest. Other pieces of land, not necessarily

1. SRO. Smith v. Douglas (UP. Currie Mack. S/4/2)

2. Division of commonalty of Hassendean, Part III, 88-91

Plate 6. Plan of commonalty of Green Muir, 1762: a typical manuscript plan made for a division of commonalty (SRO. 3904)

co-owned, which were used on a communal basis, have been included in the classification. These categories, based on the author's empirical selection, include runrig, common grazing, loans, common greens and common mosses. In the case of scattalds, which were a distinctive regional variant of the commonty and could be divided by the Act 1695, they are so distinctive in both nature and origin that they deserved a separate category.

Classification of common lands

Commonty

A commonty is an area of land belonging to one or more proprietors, which could be divided under the Act 1695, cap. 69,

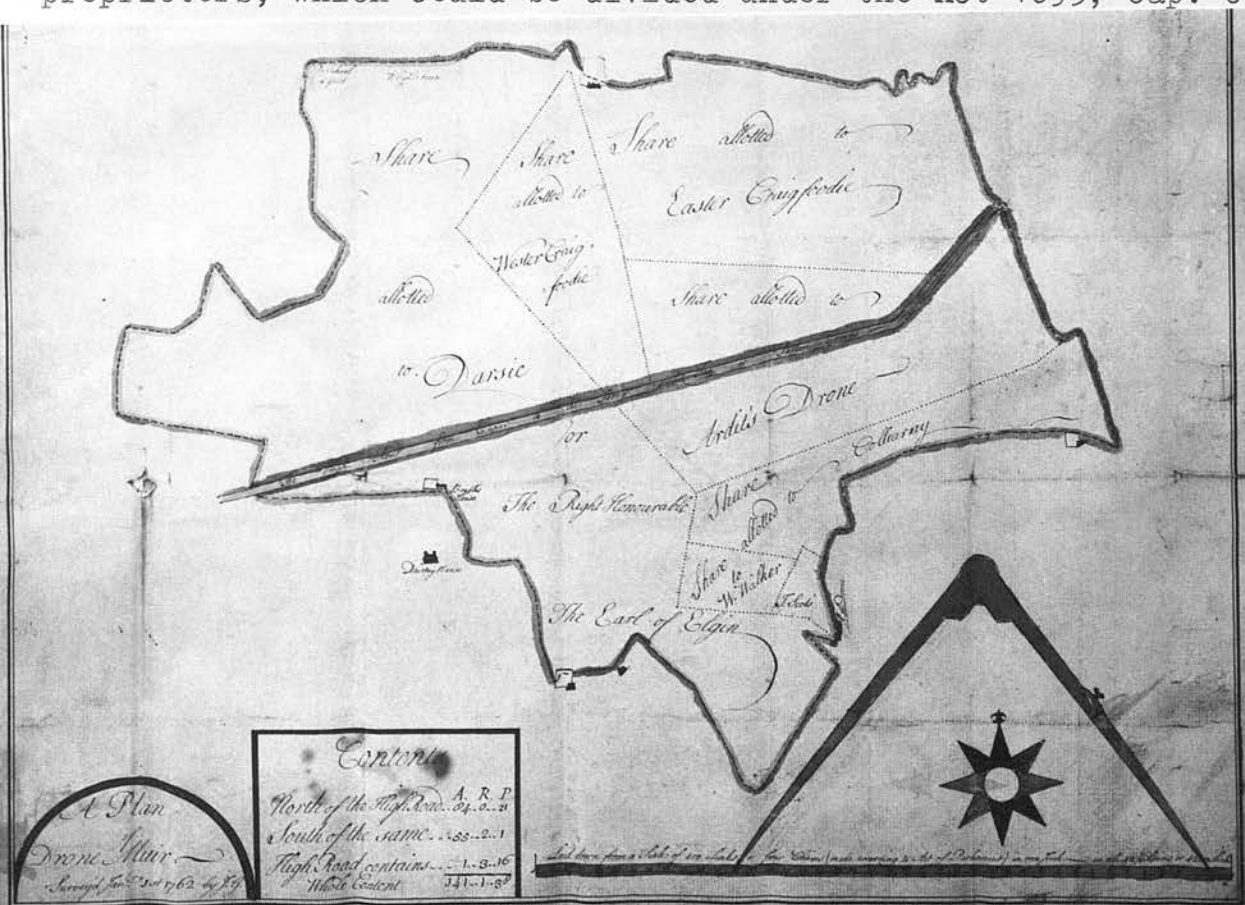


Plate 6. Plan of commonty of Dron Muir, Fife, 1762: a typical manuscript plan made for a division of commonty (RHP. 3904)

Plan

OF THE

SCATTALD

OF

HAROLD SWICK.

By William Matheson
Civil Engineer & Landsurveyor.
Novr. 1854.

KEWHOUSE SCATTALD.

Laitheslog.

C
T
I
A
H
S
C
A
T
T
A
L
D
.

Ka

Where the burn enters the Loch.

Benthouse.

Syke of Benthouse.

Part of the Loch of Cliffe.

Watquoy.

Stove.

N^o 8.

N^o 9.

N^o 6.

MR NICHOL HENDERSON.

MR DAVID NICHOLSON.

S
P
E
N
C
E

N^o 7.

ick to the Church.

ANDERSON

U N 0

N^o 11.

N^o 10.

N^o 12.

N^o 20.

N^o 21.

N^o 22.

N^o 23.

N^o 24.

N^o 25.

N^o 26.

ranging in size from tens to thousands of acres. Generally there were two or more proprietors, but in certain cases the land was under sole proprietorship with certain servitudes belonging to neighbours. The commonalty can be directly related to the infield-outfield system of agriculture to which it was closely integrated (Plate 4).

Scattald

A scattald is an area of common land in Shetland having its origins in Norse Udal law. Scattalds could be divided under the Act 1695, cap. 69. They were in nearly all cases very large, running to thousands of acres and were closely integrated in the Shetland room-land system and the township (Plate 7). To this day some land remains undivided and certain council house dwellers have rights to peat in the remaining scattalds.

Crown commons

Crown commons were specifically excluded from the Act 1695, cap. 69. These commons fell into the Crown's hands through forfeitures due to political unrest in the seventeenth and eighteenth centuries. By the nineteenth century this exemption from the Act of 1695 was proving to be an embarrassment and an Act was passed to enable the commonalties in Caithness and Orkney, in which the Crown had an interest, to be divided.¹

1. 10 Geo. IV, cap. 132 (local and personal)

PLAN

of the COMMONTY, of the LOMONDS of FALKLAND,

in the

COUNTY OF FIFE.

as Divided in the Year 1818.

by

SIR WILL^m RAE Bar^t COMMISSIONER.

APPOINTED for that PURPOSE,

by

ACT of PARLIAMENT,

Passed in the Year

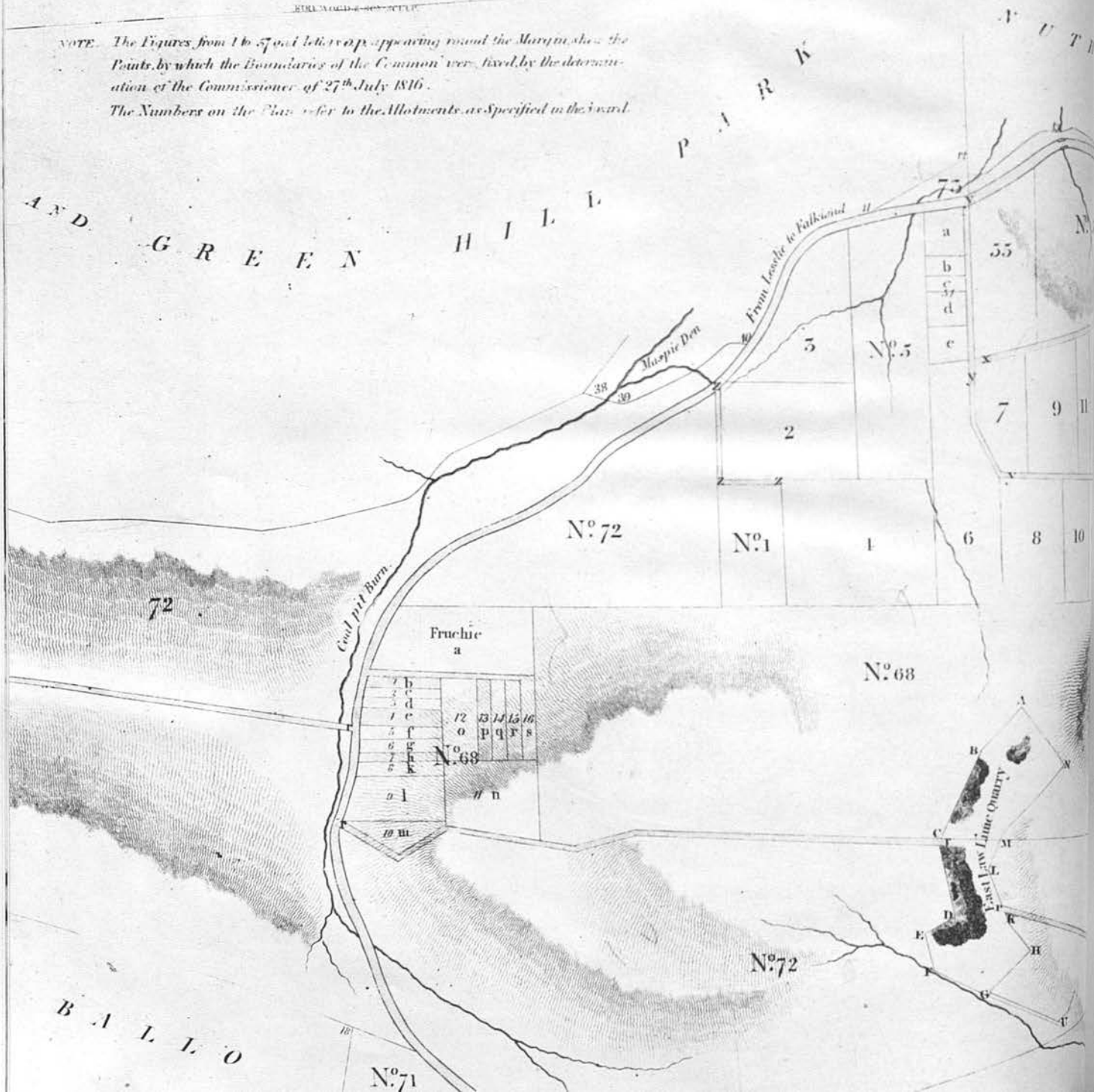
1815.

See Ind. p^o A. Martin.

EDINBURGH: 1818.

NOTE. The Figures from 1 to 57 and letters a p. appearing round the Margin show the Points by which the Boundaries of the Common were fixed by the determination of the Commissioner of 27th July 1816.

The Numbers on the Plan refer to the Allotments as Specified in the Award.



Burgh commons

Burgh commons were those owned by royal burghs and were exempt from the Act of 1695, cap. 69. Rights to the common were usually in the hands of burgesses, bailies, feuars or other townspeople and, at the same time, adjacent proprietors could also enjoy rights of commonty on the burgh common. This could lead to very ambiguous situations when it came to division.¹ The burgh common was an important feature in the urban-rural economy which existed up to the late eighteenth century in the larger towns and even later in the small royal burghs.² Methods of division varied: an Act of Parliament could be obtained, arbitration by judicial referees could be resorted to or, most popular of all, the land could be alienated by the local oligarchy (Plate 8).

Runrig

In theory runrig lands were held in common, the occupant having only temporary use of his rigs until the succeeding reapportionment of the rigs. As Third has pointed out, the egalitarian system of re-allocating the rigs had virtually ceased by the eighteenth century, so that the rigs were held in

1. See below, Chapter III, 73-74

2. See below, Chapter V

Plate 8. Burgh commons could be divided by Act of Parliament and one such commonty, the Lomonds of Falkland, is shown on this plan by Alexander Martin (RHP. 1028)

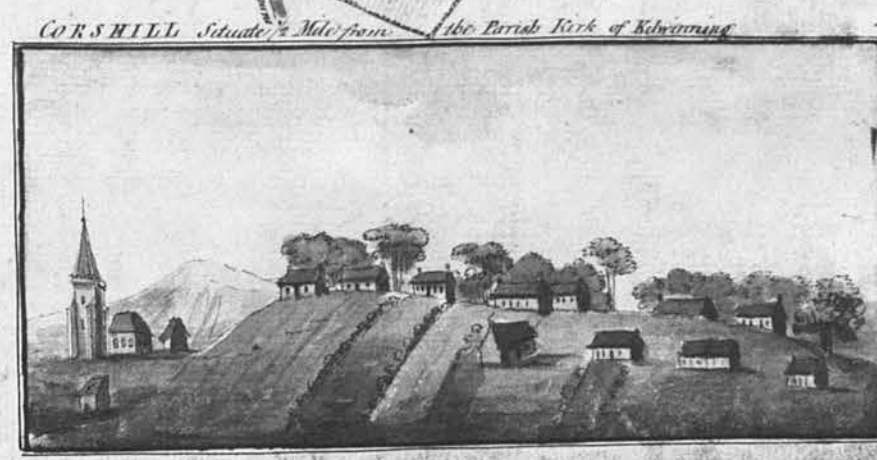
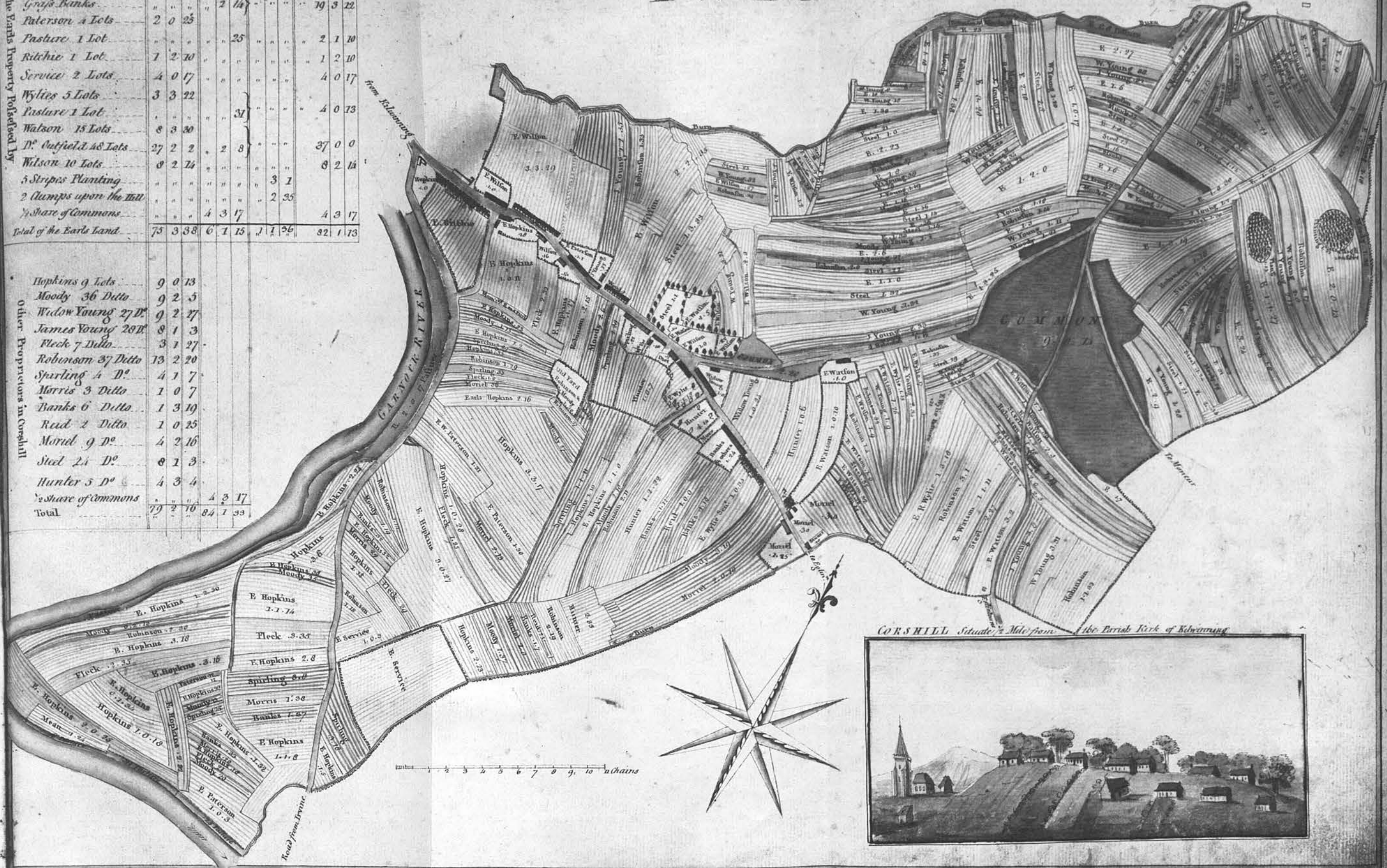
Nº 10

Runriggs of Corshill

	Arable			Pasture			Planting			Total		
	A	R	F	A	R	F	A	R	F	A	R	F
Hopkins 23 Lots	19	0	38									
Grays Banks	"	"	"	2	14		"	"	"	19	3	22
Paterson 4 Lots	2	0	25									
Pasture 1 Lot	"	"	"	25	"	"	"	"	"	2	1	10
Ritchie 1 Lot	1	2	10	"	"	"	"	"	"	1	2	10
Service 2 Lots	4	0	17	"	"	"	"	"	"	4	0	17
Wyllies 5 Lots	3	3	22									
Pasture 1 Lot	"	"	"	31	"	"	"	"	"	4	0	13
Watson 15 Lots	8	3	30									
D ^o Outfield 48 Lots	27	2	2	2	8	"	"	"	"	37	0	0
Wilson 10 Lots	8	2	24	"	"	"	"	"	"	8	2	14
5 Stripes Planting	"	"	"	"	"	"	"	"	"	3	1	
2 Clumps upon the Hill	"	"	"	"	"	"	"	"	"	2	35	
1/2 Share of Commons	"	"	"	4	3	17				4	3	17
Total of the Earls Land	75	3	38	6	1	15	1	1	26	82	1	73

Other Proprietors in Corshill

Hopkins 9 Lots	9	0	13
Moody 36 Ditto	9	2	5
Widow Young 27 D ^o	9	2	27
James Young 28 D ^o	8	1	3
Fleck 7 Ditto	3	1	27
Robinson 37 Ditto	13	2	20
Sparling 4 D ^o	4	1	7
Morris 3 Ditto	1	0	7
Banks 6 Ditto	1	3	19
Reid 2 Ditto	1	0	25
Moriel 9 D ^o	4	2	16
Steel 2 1/2 D ^o	8	1	3
Hunter 5 D ^o	4	3	4
1/2 Share of Commons	"	"	4 3 17
Total	79	2	16



perpetuity.¹ There was however, common muir adjacent to the areas held in runrig that was divided in conjunction with the division of runrig. The enclosure of runrig lands was accomplished under the Act 1695, c.36. Certain cases were raised as joint actions of division of commonty and runrig, as was the case in the division of the Tenpound land of the Kirktoon of Douglas, Douglas parish, Lanarkshire, which shows the close relationship between these mutually associated forms of land tenure.² The runrig lands of Corshill provide an ideal illustration both of this type of land tenure and of the level of John Ainslie's cartographic skill (Plate 9).

Common green

A A common green is a small area of land, in or near a village or township, belonging to a single proprietor and used by his tenants for pasturage. This type is the closest form in Scotland to the English village green or common. In no case does the Act 1695 seem to have been invoked for division: most have simply

-
1. Third, B.M.W., 'The changing rural geography of Scottish Lowlands 1700-1820: a study of change in landscape and economy as revealed for certain regions, by contemporary estate plans and papers and examples of the enduring effects. A critical selected bibliography of estate plans.' Ph.D. Thesis (1953), University of Edinburgh.
 2. SRO. Douglas y. Inglis (EP. Dal. 16/2/1779)
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Plate 9. Runrigs of Corshill, Kilwinning parish, Ayrshire, drawn by John Ainslie, 1789-90 (RHP. 3/18)

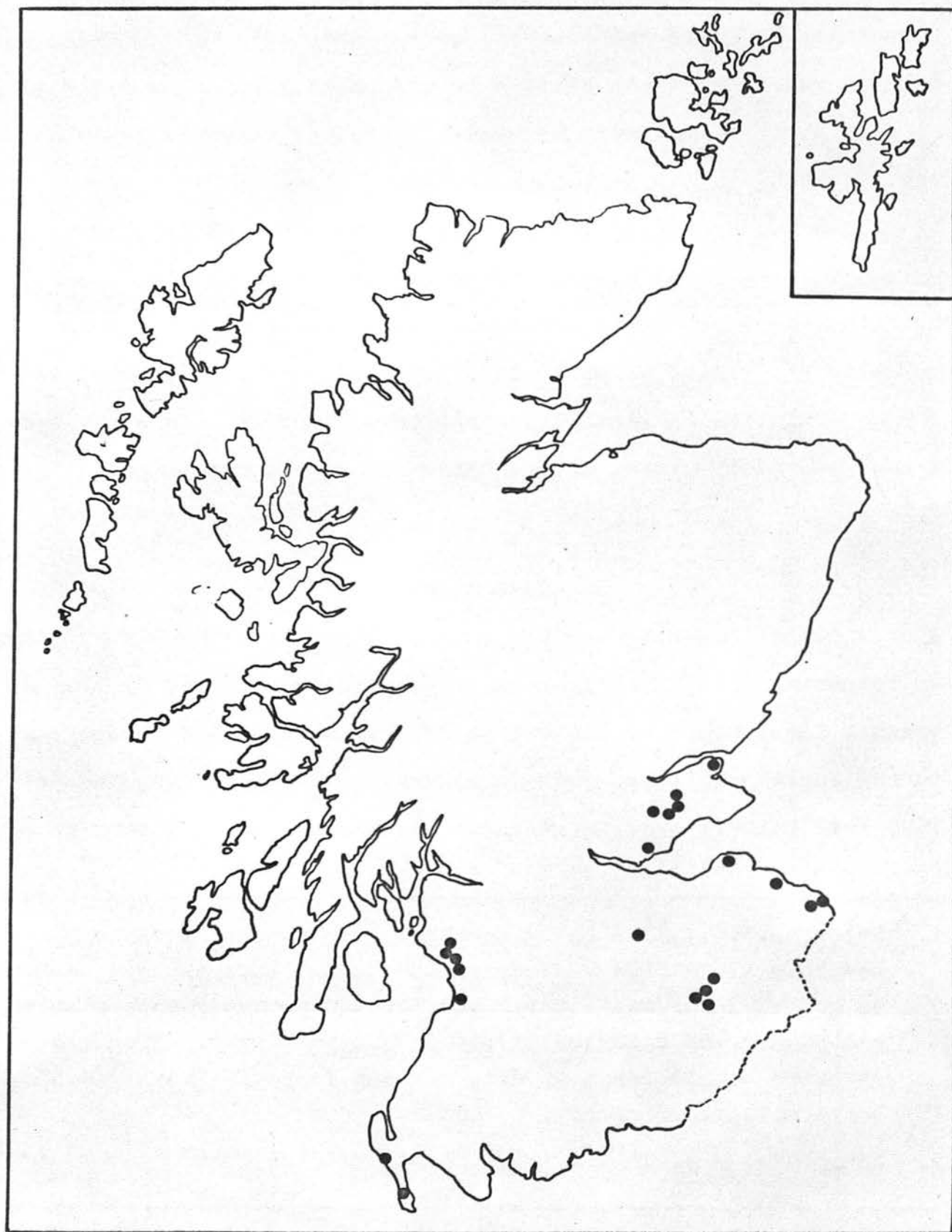


Fig.1. Distribution of 'common greens' in Scotland (Provisional)

vanished. Many examples are shown on eighteenth century estate plans, mainly in Lowland and Border counties (Fig. 1). Their function appears to have been related to that of the loan, being its terminus in the village utilised for milking the cows. Usually common greens are very small, under ten acres (Plate 10).

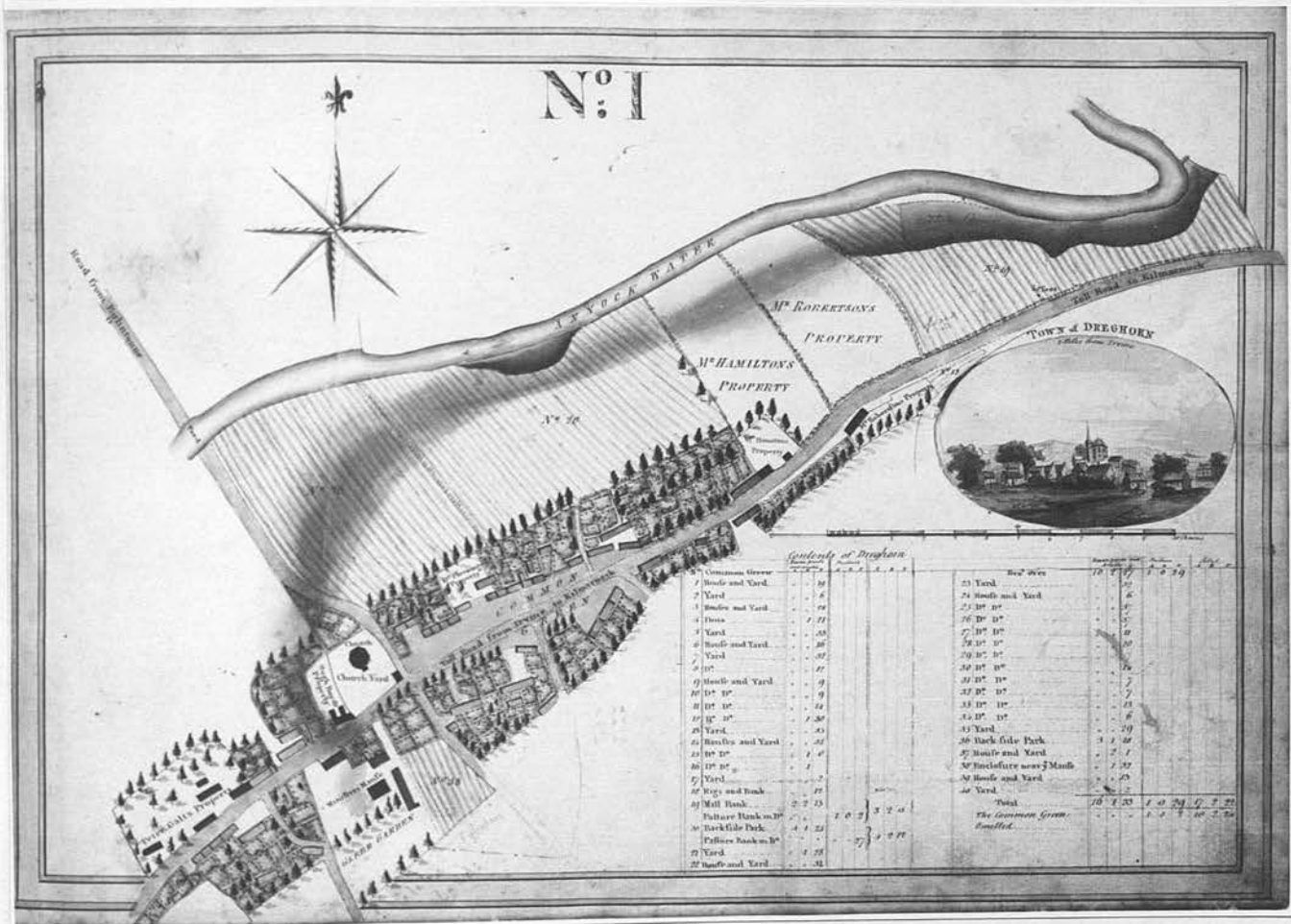


Plate 10. Common green in the town of Dreghorn, Ayrshire, drawn by John Ainslie, 1789-90 (RHP. 3/18)

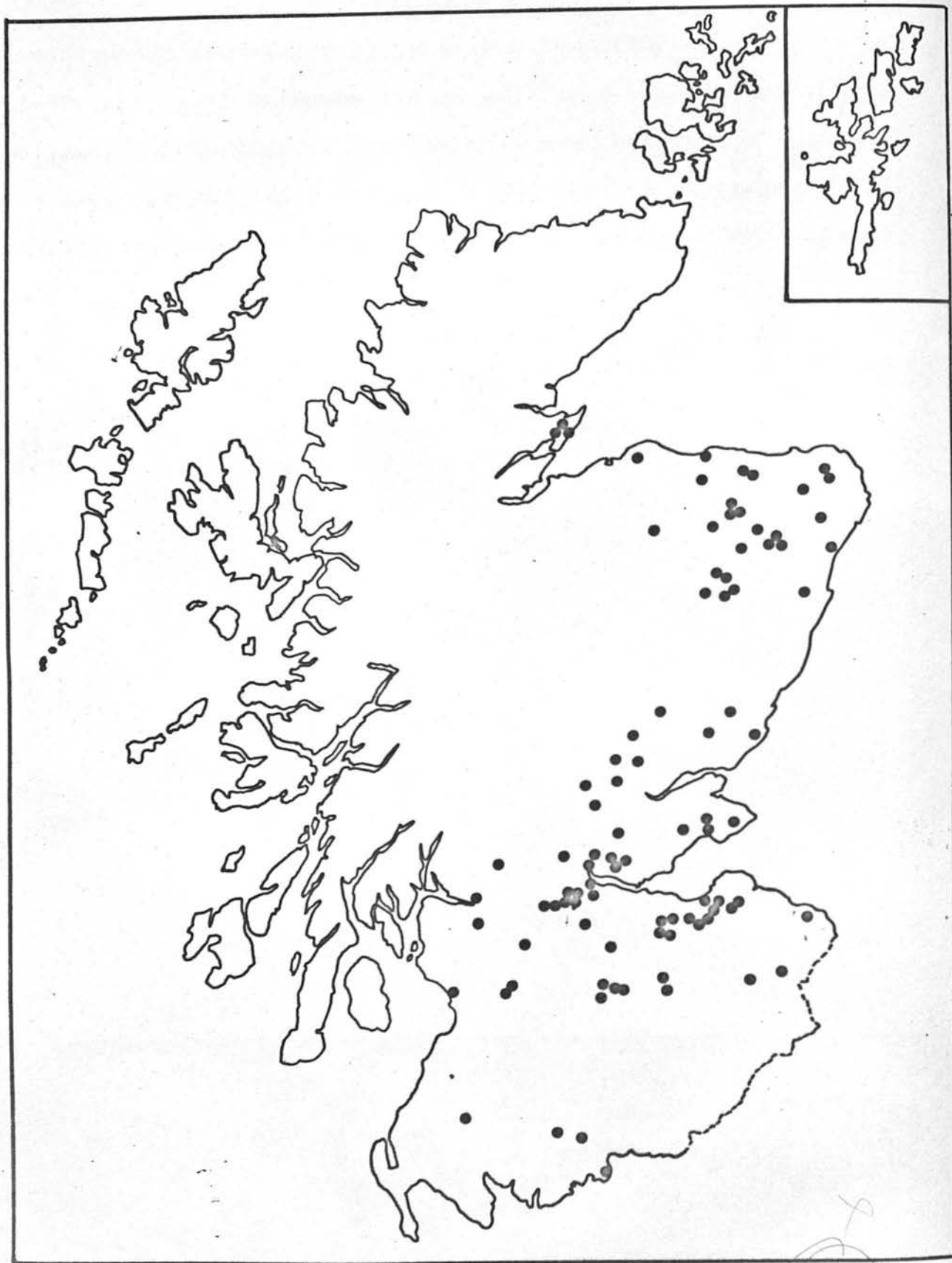


Fig.2. Distribution of the place-name element 'loan. Each dot represents a single occurrence of the name. (Source. Place-name Survey, School of Scottish Studies, University of Edinburgh)

Loan

The loan is strictly a route-way from farm or township to the hill pastures or commonty. It enabled the cattle to be safely herded past the unfenced infield. At times the loan was very wide and differed from the common green in name only (Plate 11). The name loan has a widespread distribution all over southern Scotland (Fig. 2).

Common moss

A common moss is an area of peat bog, either a part of a commonty or standing in isolation, in which proprietors had joint use for fuel. In certain cases of division of commonty where it was not possible to divide the moss, they were left common to the proprietors after division. Sometimes these mosses appear in a later division of commonty process when the fuel reserves had been exhausted. This type of situation arose after the division of the commonty of Balerno, Currie parish, Midlothian, in 1768 when the Red Moss of Balerno was left undivided.¹ The moss was exhausted by the beginning of the nineteenth century, and itself was subjected to a process of division in 1829, but the action failed when the Court ruled that only an action of souming and rooming was competent.² Where a common moss was divided, the basis of division was taken - not as the proportion of the valued rent as was required by statute - but on the length of the proprietors' lands fronting the moss.

1. Copy of decree arbitral in Johnson v. Scott (UP. Currie Mack. J/4/17)

2. SRO. Johnson v. Scott (UP. Currie Mack. J/4/17)

Earl of Panmure, to William Pitt, Esq.

Wester-brown is colored about with system, Easter-lighting with red,
Wester-lighting with a blue green & the globe with no colour.
All coloured and so release it will belongs to Easter-lighting
& so of the rest.

24. The Fishyard must
be included with the
for the Fishmaster
not as a part of the
but on land from the



Observations on the globe
'Various countries'
proofed, in lieu of that, and
Examination. It is given them as
valuable notes on the subject.
But the number of those
available. Mr. Garrison's
association of the Indian tribes
that the Indians who should be
found much about much
is, regular or rather irregular
than what he accounts for
it is. They thought that
it was made probably the only
machines, & sometimes that
that the edges had in old
times and as far as the
The Moravian Church
represented that (1801) was
in the march of progress
is, double, double, double

Common grazing

Common grazing is land owned by a single proprietor but leased to several tenants to graze their cattle communally (Plates 11 and 27). This form of land tenure was found largely on the large Highland estates. To this day there are relics of this system to be found in the crofting counties of Scotland. Up to the middle of the eighteenth century black cattle were dominant on the grazings, as sheep were generally regarded as weak animals that could not stand the rigours of droving. Once it was discovered that sheep could survive in Highland conditions the common grazings were converted into sheep walks and the wholesale depopulation of the Highlands began. Because there was no multiple ownership, the division of these commons did not require any legal sanction. In the parish of Kenmore, Perthshire, according to the minister writing for the New Statistical Account in 1838, 'there are no undivided common with reference to landlord and landlord; but there is abundance of them as to one tenant and another; it being no unusual thing, though the practice is fast wearing out, for four, six or even eight occupants of a hamlet to send their cattle to one upland common'.¹

1. NSA, x, 473

Plate 11. Plan by William Panton, 1766, showing a loan (marked P) connecting the township to the common grazing (RHP. 1667/3)

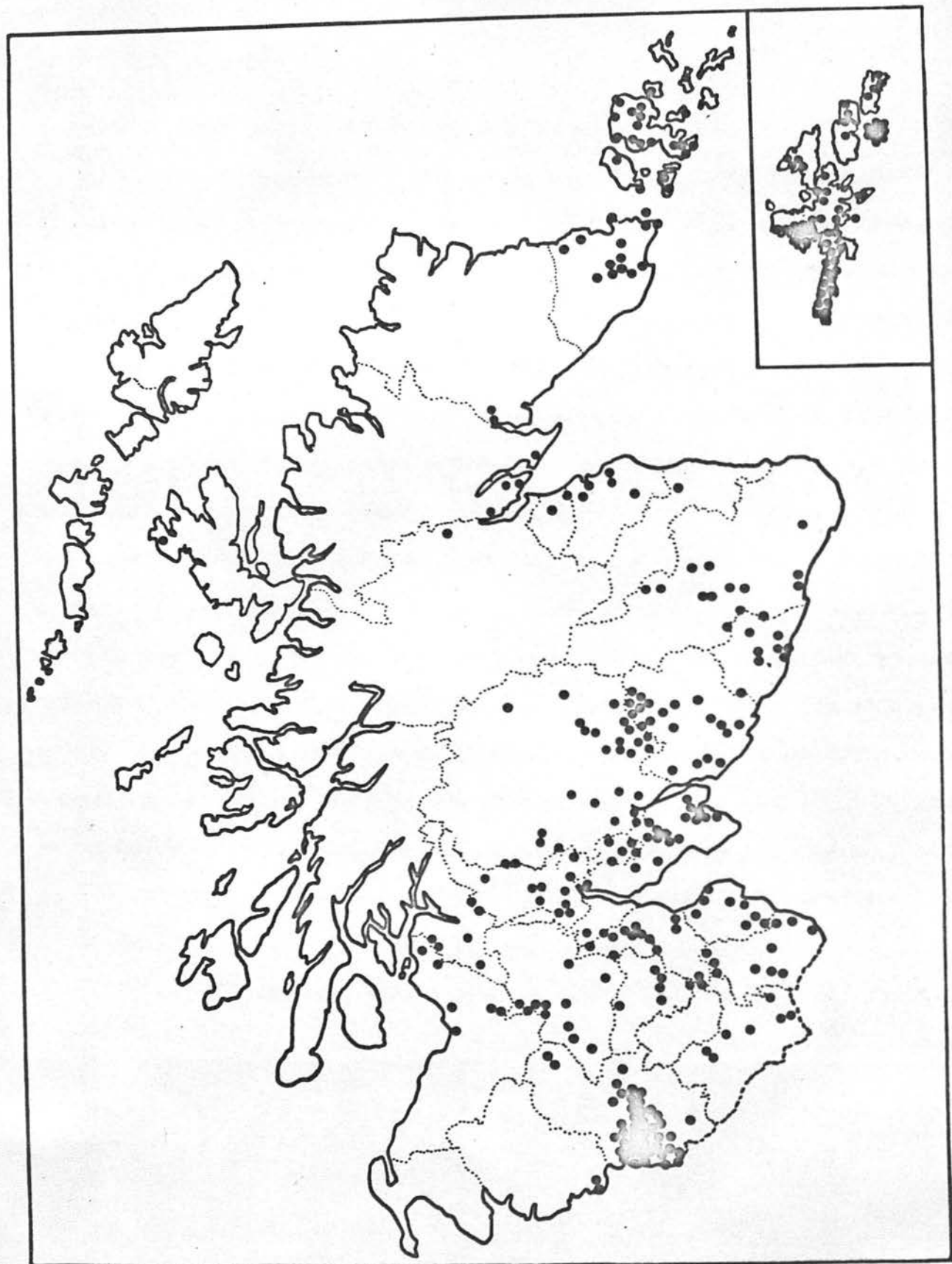


Fig. 3. Distribution of Scotland's communities. Each dot represents a community which was involved in legal action in the Court of Session.

Distribution of commonities

Scotland's commonities show a distinctive distribution pattern (Fig. 3). Indeed, if a line is drawn around the concentration of commonities, Scotland can be divided into commonity and commonity-void areas (Fig. 4). In general, commonities were found in the Annan valley of Dumfriesshire, Berwickshire lowlands, the Central Valley, the East Coast lowlands, the coastal plain of the Moray Firth, northeast Caithness, Orkney and Shetland: this amounts to an inventory of the areas favourable to settlement in Scotland. There is indeed a close correlation between the distribution of commonities and areas of better farming as shown by the agricultural regions of Scotland by Wood.¹

The pattern of distribution can be said to represent the picture in 1695, for there is no evidence of the establishment of any commonities after this date. Even before 1695, the establishment of commonities appears to go back to earlier than the twelfth century and, consequently, to a time when land holdings were not recorded on documents. The earliest charters, dating from the Normanisation of the Scottish Lowlands, indicate that the system which included common pastures was being perpetuated rather than introduced. The commonity, inextricably mixed with the system of agriculture in pre-feudal Scotland, was formalised into a system of land tenure in the beginning of the feudal period, and was seen as an anachronism by the seventeenth century. Therefore, the pattern of distribution of commonities divided under the Act represents a definitive pattern for 1695.

1. Wood, H.J., The Agricultural Atlas of Scotland, London, 1931

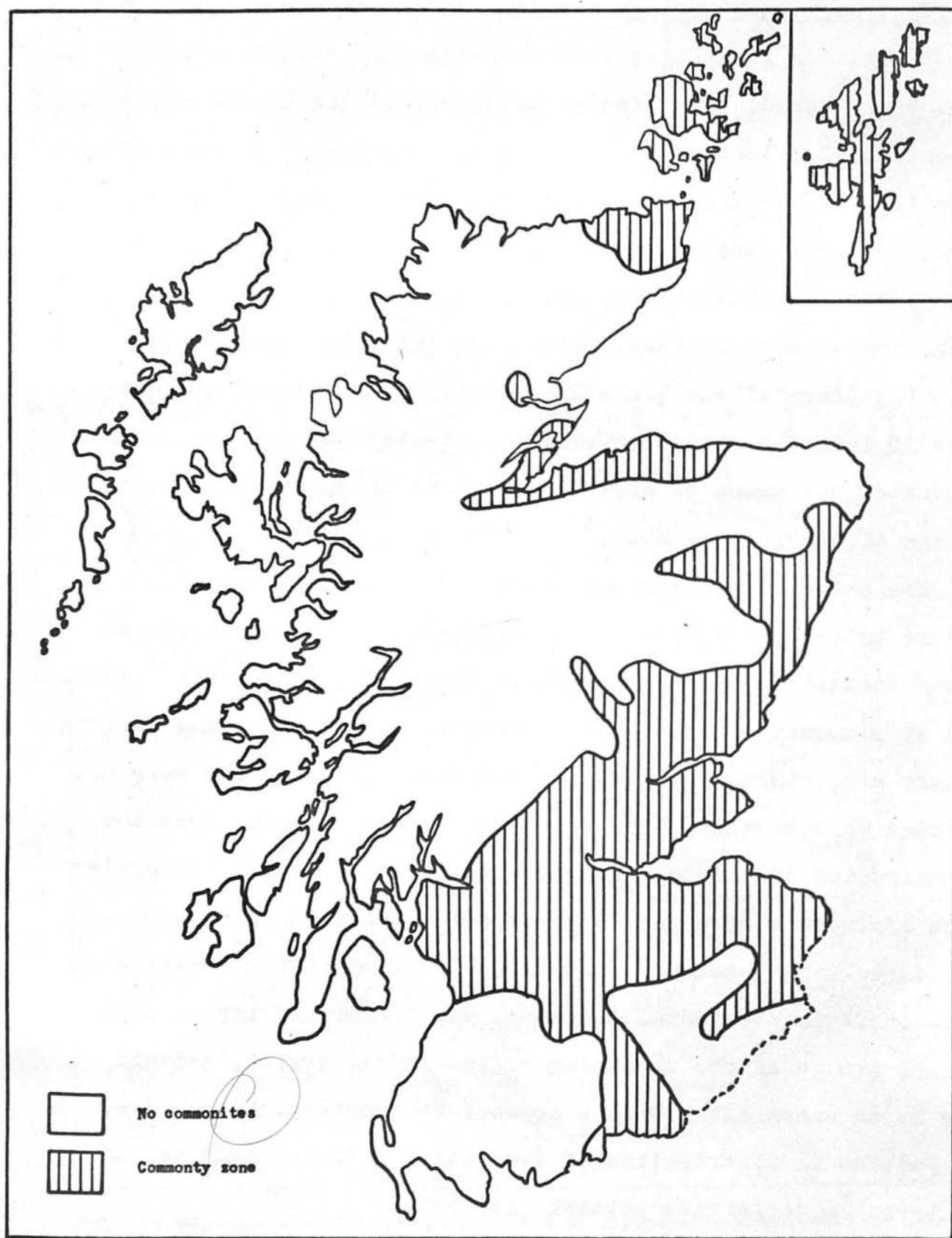


Fig. 4. 'Commonty void' areas of Scotland. The shaded portion represents the main distribution zone of Scotland's commonities and corresponds to the area favourable to settlement in Scotland.

In southwest Scotland commonities were concentrated in Dumfriesshire. The sixty Dumfries commonities stand out in marked contrast to the complete absence of them in Wigtown and only two lone examples in Kirkcudbright. Accounting for this uneven distribution is fraught with difficulty. That Galloway had its own laws as late as 1384 is one historical factor which has to be remembered.¹ On the other hand, the lowlands of Dumfriesshire, and especially the valley corridors of the Annan and Nith, may have offered much better settlement opportunities than the more humid lowlands of Wigtownshire. Even within Dumfriesshire there seems to have been a definite preference for the valley of the Annan rather than the Nith (Fig. 5). No ready explanation for this has been forthcoming, but a study of these commonities in depth, in which an analysis of place-names of all farms with rights to the commonity is made, may yield an answer to this problem. The only commonities found outwith the Nith and Annan valleys are Langholm and Sanquhar, both of which occupy important valley sites. In microcosm, the distribution of Dumfriesshire commonities thus mirrors the national pattern of commons in favourable regions and a total absence in highland zones.

There are a number of commonities on the salt marshes fringing the Solway Firth - Annan, Cummertrees, Dornock, Skyrescleugh - which were utilised by settlements situated on the raised beaches further inland.² They provided land both for grazing and peat,

1. Dickinson, W.C., Scotland from the earliest times to 1603, London, 1961, 39

2. Houston, J.M., 'The Rural Settlements of the Solway Firth Plain', Comptes Rendus du Congrès International de Géographie, Lisbon, 1951, vol. iii, 421-6

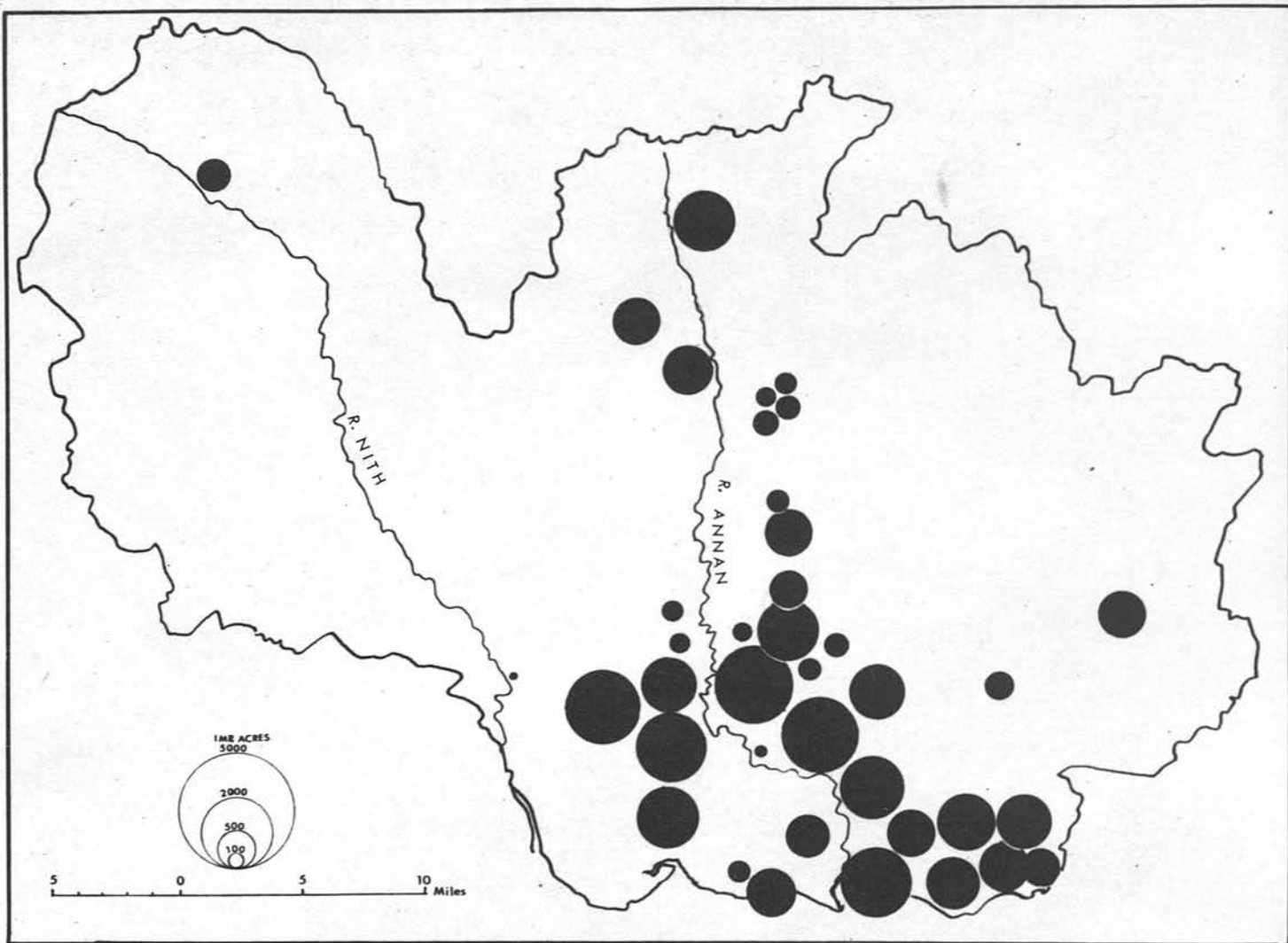


Fig. 5. Communities of Dumfriesshire and their relationship to the Annan Valley

1. Dickinson, W.C., *Scotland from the earliest times to 1603*, London, 1961, 30.

2. Houston, J.M., 'The rural settlements of the Solway Firth plain', *Comptes Rendus du Congrès International de Géographie*, Lisbon, 1951, vol. III, 421-6.

the latter occurring at the landward margins of the merse and providing only six to twelve inches of fuel.¹ The Merse of Kirkbean, Kirkcudbrightshire, falls into this category, and with its counterpart the Fell of Kirkbean forms an extension of the Dumfries group. The two names - Merse and Fell - provide firm evidence of Norse settlement in this region and, when these are taken in conjunction with the name "Bye" (Norse, = farm), they provide a significant lead to follow in a detailed examination of Dumfriesshire's commonties.²

The complete absence of commonties in the rest of Kirkcudbrightshire, the whole of Wigtownshire and southern Ayrshire presents an exception to the hypothesis that commonties were to be found in regions of favourable conditions, for the lowlands of these counties were ideal for settlement. That there were never commonties does not seem to be in doubt. The parish of Girthon, Kirkcudbrightshire, possessed no commons in the year 1844, but the contributor to the New Statistical Account added significantly, 'nor ever has been'.³ Examination of the plans of the Stair and Agnew of Lochnew muniments, amounting to some 539 items, yielded not a single allusion to common land.⁴ These two landowners possessed a considerable area of Wigtownshire.

1. Marshall, J., 'The Morphology of the Upper Solway Salt Marshes', Scot. Geogr. Mag., 1962, 78 (2), 81-99

2. Nicolaisen, W.F.H., 'The distribution of old Norse byr and fjall', Scottish Studies, Edinburgh, 1964, viii, 208-13

3. NSA, iv, 301

4. RHP. 3727-3779, 4501-4988

On all counts - the absolute number of commonities, their acreage and relic place-names - Dumfriesshire stands out in marked contrast to the two counties to the west:

Comparison of commonities in southwest Scotland

	No. of commonities	total acreage	no. with acreage not known	place- names
Dumfriesshire	39	33,346	17	7
Kirkcudbrightshire	2	2,366	0	0
Wigtownshire	2	12	0	1

The contrast seen in the three south-western counties is also evident in the adjacent county of Ayr. There were no commonities at all in the southern half of the county and the bulk of them lie close to the border with Renfrewshire. Three of these, the Muirs of Kilbirnie, Glengarnock and Largs, can be recognised as part of a larger group including Duchal Muir and Mistylaw Muir which occupied a large part of the Hill of Stake. The other commonities found in Renfrewshire, Duchal Moor and Paisley Moss, lay in the alluvial basin drained by the Black Cart Water. These represent the ill-drained lowland variety as compared to the exposed moorland type comprising the rest of the county's commonities.

Returning to the border counties - Roxburgh, Selkirk and Berwick - we find that most of the commonities lay either close to the river valleys or else along the flanks of the Lammermuir Hills. In Roxburghshire, especially, the commonities lay on the hills overlooking the Teviot valley. On the whole there were

comparatively few commonities in Roxburghshire and none in Selkirk. This is in marked contrast to adjacent Dumfriesshire and the paradox would provide a worthwhile theme in any detailed analysis of the origins of the settlement patterns of these three counties.

The flanks of the Lammermuir Hills provide the site of many commonities, each lying alongside the other, from Duns in Berwickshire to Garvald in East Lothian. The central areas of these hills, however, appear not to have been commonity. An outlier of this group is the commonity of Coldingham which occupied the bleak moorland on the coast to the east. On the northern flanks of the Lammermuirs there was a significant gap between the commonity of Dunbar and a group around Lauder consisting of the commonities of Lauder, Wideopen, Carfrae, King's Inch and one unidentified.

Another homogeneous group lay on the flanks of the narrow Eddleston valley north of Peebles (see Fig. 10, Chapter III).^{p.74} The burgh had rights to some of these commons but others were simply commonities. The status of these common lands could change, since the burgh willingly exchanged rights with neighbouring landowners and the application of the Act of 1695 thus depended on the current status of the land.¹ The finger of the Pentland Hills pointing to the heart of Midlothian contained several commonities including Halls, Turnhouse Hill, Pentland Hills and Currie Muir. Other commonities lay in the glaciated lowlands of East Lothian: most were small but two or three which lay on the sand-blown coast line amounted to two or three hundred acres each.

1. Commonities of Eshiels and Pilmuir, see Directory 187-8

The Lanarkshire commonties were to be found at the southern end of the county, especially on the heights along the county boundary with Ayr. The parish of Avondale possessed commonties amounting to about 2000 acres. Another important series of commonties was those on the hill sides overlooking the upper reaches of the Clyde. These commonties represent a continuation of the Annan valley group, which was one of the major groupings of commonties in Scotland. Northwards towards the Biggar gap and Lesmahagow, the same distribution can be seen.

North of the Clyde, the commonties of Dunbartonshire occupied a major portion of the Kilpatrick Hills. The narrow alluvial plain, with its high density of population, rises steeply to open moorland of which a large part belonged to the burgh of Dumbarton. North-eastwards, in the carselands of the River Forth, Flanders Moss and Boquhapple Moss formed commonties on the peat-covered plain. In the early nineteenth century, when these commonties had been divided, the peat was floated off and the land was reclaimed and brought into cultivation by George Home Drummond of Blair Drummond.¹ The eastern flanks of the Campsie Fells, overlooking Stirling, were occupied by several commonties.

Although Fife's commonties did not amount to a large area - 8223 acres - there were at least forty-one in the county. This large number was divided approximately into two groups: one around the Lomond Hills in the centre of the county, and the

1. SRO. Abercairny muniments (GD. 24/808A, 809)

other around St Andrews in the Ness of Fife. It appears that once commonties occupied a much greater proportion of the backbone of the county but through encroachments they had become insignificant relics of the past.

In spite of its great area, Perthshire's commonties had a compact distribution, in Strathearn to the south of the Highland Boundary Fault and in a tight cluster on the boundary with Angus. The parishes of Moulin, Kirkmichael, Alyth and Glenisla contained some of the greatest areas of commonty in Scotland, comparable to Shetland and Orkney. The other main group in Angus lay close to the valley of the River South Esk. The commonties of Kincardineshire, amounting to 11,828 acres, lay on the foothills surrounding the mountainous west of the county.

Nearly all the commonties in Aberdeenshire lay in the valleys of the Dee and Don (Fig. 6). The part of the county in the Highland zone and the Buchan peninsula were without commonties. The same applies to Banffshire and all of upland Moray and Nairn. Only two commonties have been found in Inverness-shire and one, the lands of Glendale in the Isle of Skye, was not a commonty at all but had a technical existence because two parties found that a process of division of commonty was a suitable method of settling a march dispute.

The commonties of Ross and Cromarty lay on the fertile plains along the Moray Firth. The largest commonty, the Forest of Millbuie, occupied the whole of the central sandstone ridge of the Black Isle totalling some 7112 acres. Easter Ross was totally without commonties although conditions were favourable for their development. Likewise, Sutherland had only two

commonities, on the lowlands north of the Dornoch Firth. The almost complete lack of commonities in this county is understandable because nearly the whole of it was in the hands of the Dukes and Duchesses of Sutherland.

The rapidly changing nature of land ownership in Scotland is, at times, quite bewildering for next to Sutherland, which belonged to one great family, lay Caithness which had a multiplicity of land-owning lairds and no great noblemen.¹ The numerous commonities in the northeast of the county formed an ample battleground for litigation in the 1830s. Since the commonities were considerable in extent (over 37,000 acres have been discovered so far), and they were close to Orkney and Shetland, it is possible that their origins may lie in the Norse settlement of the fertile corner of Caithness.

The Highland counties of Scotland - Argyll, Inverness, Ross and Cromarty and Sutherland - possessed few commonities, although land was universally used for common grazing. The turbulent history and specialised social relationships found in this zone may account for the distinct division between common land as a land use and as a type of land tenure. Common grazing endures to the present day in the crofters' common grazing lands beyond the township. But as a system of land tenure commonity seems never to have been established in the Highlands. The practice of granting written titles to land in this area was infrequent before the sixteenth century and land was granted as uniform blocks without any element of co-ownership. The common lands of

divided into 'infield' and 'outfield'. The infield, being the

1. Mitchison, R., Agricultural Sir John, London, 1962, 3

the Highlands suffered the same attrition as the commonities of lowland Scotland. Whereas in the former area the prevalence of single proprietorship led to a remaking of the agricultural landscape without recourse to legal action, in the latter area multiple proprietorship involved a more sophisticated procedure.

Lastly, there were the commonities of the Northern Isles - Orkney and Shetland - which were relics of the former Udal system of the Norse settlers. In Orkney one finds the boundaries of the commonities and parish conterminous, but in Shetland they are related to the room-lands of the townships. The commonities of Shetland were known as scattalds deriving their name from the Norse land tax called scat.

Function of commonity in rural economy

The modern concept of the commonity as being merely waste, on the periphery of agricultural areas and used only for occasional grazing, is far from the true role originally played by this type of land. The commonity land was closely integrated into the subsistence economy of the period under review, as it provided grazing, fuel and building materials, as well as a reserve of land to accommodate an expanding population.

A typical agricultural settlement was the township, a cluster of dwellings which was solely an agricultural community (Plate 13). They were known as fermtouns, the name being derived from their single function. Occasionally, a church was located in the fermtoun and then it was known as a kirkoun. The land was divided into 'infield' and 'outfield'. The infield, being the

best land nearest the township, was held in common, sometimes in runrig, and received the whole of the manure produced by the township. The outfield was, for the most part, treated as pasture but a proportion of it was periodically ploughed for as long as it would bear crops. Outwith the outfield, beyond the head dyke, lay the commonty or common grazing, depending on the ownership of the land (Plates 4, 13, and 26). Commonties provided peasant farmers a large portion of their needs, as shown in the following table:

The role of the commonty
in pre-enclosure agriculture

<u>Food</u>	<u>Fuel</u>	<u>Building</u>	<u>Industrial</u>	<u>Communi- cation</u>
Grazing:	Peat	Divot (turf)	Watergangs	Roads:
Milch cows	Turf	Heather	Mill dams	General
Nolt	Broom	Timber	Bleackfields	Peat
Sheep	Coal	Stone	Kelp	Drove
Goats		Slate	Limestone	Fairs
Horses		Whins	Quarries	
Shielings			Marle	
Arable reserve			Iron ore	
Fishing				

Pasturage

Pasturage is the one truly universal function of the commonty in Scotland. With the sole exception of the commonty of King's Inch, Channelkirk parish, Berwickshire,¹ every commonty appears to have been pastured by animals. The commonty had a twofold use. First, it provided grazing for the cattle in a period when highly nutritious grasses were largely unknown and the cattle had to roam far and wide to get sufficient sustenance. Secondly, the use of

1. See below, Chapter II, 63; Directory, 41

the unfenced field meant that cattle had to be attended continuously during the growing and harvesting seasons as, not unnaturally, the young crops presented a great temptation to the cattle. Thus the beasts had to be kept well away from the arable infield and outfield lands so as to reduce the chances of accidental grazing. When this did occur the owner of the culprit could be called upon to make amends.¹

The place of the commonty in the tempo of rural life is illustrated by the following report:

'The milk cows pasture on the grass inside the town in summer till twelve o'clock, when they are milked and driven to the hill [scattalds of Sandsting and Aithsting]; and in the evening, are again taken inside of the town, where they feed a few hours, are milked, and put into the byre during the night. The young cattle, when they are driven to the hill in the end of May, are never allowed to enter within the town dykes till about the month of November, when they are taken in and set to the band for the winter.'²

It appears from witnesses' depositions that grazing was regarded as the main function of the commonty. Many in their fifties and sixties recall the days of their youth when they were in charge of the cattle. In a case in 1840:

'Appeard Paul Farquharson, residing at Kinnaird, in the parish of Lintrathen, witness cited, sworn, etc., ut antea, and interogated, depones. That he is seventy years of age, and was born in Woodend of Downie, of which his father was then tenant: that the deponent herded at the Hill of Downie at the Burn of Altiltane, and began doing so when he was six years of age.'³

1. See below, Chapter V, 128

2. NSA. xv, 123

3. SRO. Smyth v. Rattray (EP. 1/10/1840) printed State of Process, 62

And again in the same process:

'Appeared Margaret Robertson or Macdougall, wife of John Macdougall, innkeeper, Kirkton of Glenisla ... that she is forty-nine years of age: that she was for three years herd to Alexander Robertson in Woodend of Downie ... that she thinks she was between ten and eleven years of age when she entered to Robertson's service.'¹

In certain cases the cattle were in the charge of a common herd who undertook to look after all the cattle belonging to farms with rights upon the common.² This spotlights one of the great weaknesses of the common grazing for there could never be any selective breeding and the result was the very poor specimen of cattle that was to be found universally in Scotland. 'The promising heifer on the unenclosed common grazings was far more likely to mate with an athletic and leggy bull than with one possessing the qualities that are now prized in a beef animal.'³

Sheep were also kept on the commonty: 'the herd of Wester Grundiston had yearly both nolt [Black cattle] and sheep pastured on Hassendean'.⁴ The inhabitants of Kirriemuir let their sheep roam over the commonty without a herd during the winter but 'they began to [herd] early in the Spring; and the sheep of Kirriemuir were herded in the North Muir, from that time until the end of the bear feed, when they were sent to the hills'.⁵

1. SRO. Smyth v. Rattray (EP. 1/10/1840) printed State of Process, 61

2. See Division of Hassendean Common, Part III, 190-1

3. Symon, J.A., Scottish Farming Past and Present, Edinburgh, 1959, 320

4. See Division of the commonty of Hassendean, Appendix III, 96-8

5. SRO. Lyell v. Smith (EP.M.H.B. 7/7/1819) printed defenders proof, 11

Buaranradhluachir

Buachluachir

Curnnakeilireg

Bilrigmore

Ac. 634.488

Ac. 779.781

m

Ruighdharon

Crostanlon Sheallings

Balintuing & Donavoured Sheallings

m

Ac. 599.875

N. 2

Buaranmeuridh spring

Bilrigbeg

Cuilmillin Sheallings

Ardgie Sheallings

Pp
clachanrechbrech

N. 5
at 1/2

Ruighanluc

Commonities were sometimes so large, especially on the edge of the Highland zones, that the animals could be taken for summer grazing. Cattle, especially the yearlings, were driven up to the high pastures at the onset of summer. The herds built themselves temporary shelters so that they could remain with their cattle, and remains of these rude huts or shielings can be seen throughout the Highlands as well as being recorded in the Lowlands by such place-names as Galashiels, Penshiel and Mayshiel.² At times place-names containing the element shiel are found associated with commonities. In the case of Hawick Common, a farm at its southern end was known as Hawick Shiels (Plate 35).

The above form of transhumance was not restricted to commonities. In fact quite the reverse was the case, for there are few records of shielings on commonities. Where this does occur it is usually on commonities close to the Highland Boundary Fault, for example the Forest of Alyth, that occupied thousands of acres (in this case nearly 8000). By the eighteenth century considerable pressure was felt on the shieling grounds (Plate 12). At times this pressure erupted into violence when opposing proprietors pulled down each others' shielings.³ The restricted distribution

1. Gaffney, V., 'Summer Shealings', Scottish Historical Review, xxxviii, 1959, 21-35

2. NT4836, NT6363, NT6264

3. See below, Chapter IV, 109

Plate 12. Shielings on the commonity of Ardgie Tenpound Land and Ballyoukan, Perthshire, from a plan drawn by Robert Menzies, 1829 (RHP. 3639)

of this function reflects the void of commonities in the Highlands, an area where shielings survived the longest. The commonities of the Lowlands were rarely large enough to support this type of pasturage, but the widespread survival of the element 'shiel' in place-names testifies to its use at an earlier date.

Reserve of arable land

From the large number of intakes recorded on commonity plans, it is evident that proprietors regarded commonities as a suitable reserve of arable land (Plates 4, 23, 26). We shall never know the total extent of land taken in illegally from Scotland's commonities, but from contemporary evidence the practice seems widespread.¹ In 1857 the tenant of the farm of Brenachie, Logie Easter parish, Ross and Cromarty, was somewhat inconvenienced by squatters on the commonity of Brenachie:

'The possession and enjoyment thereof was interrupted by several persons who as members of the public claimed right to use and then did use the said 258 acres 1 rood and 32 poles or thereby ... on the ground that the said pasture land was not the property of the defender, but belonged to the public and various proprietors. The said parties with their families and others settled down upon the said pasture and used the same as pasture for their bestial and cultivated some portion thereof.'²

This aspect of a reserve of arable land indicates that the commonity was an extension of the outfield, as indeed it was as far as land use was concerned. Yet, although they were

1. See below, Chapter III, 94-96

2. SRO. CS.249/5783

indistinguishable as land use, they were totally different in land tenure. In the early years of the eighteenth century it appears that a proprietor could make intakes without incurring the wrath of his neighbours. Only in the middle of the century did proprietors begin to protect their rights with any zeal and then many bitter controversies ensued over the legality of a neighbour's intakes.

Turf as a building material

With changing technology society's reliance on certain raw materials alters, as seen in the role of turf in eighteenth-century life, when it played the combined role of coal, steel, concrete and fertiliser. We can see wood playing the same part in England in this period, but since Scotland had suffered from an acute shortage of timber in the Lowlands from an early date, turf was substituted for timber. In the early eighteenth century Kirriemuir had only seven or eight slate houses and the inhabitants 'got what feal and divot they wanted for the building and repairing their houses, either from the North or South Muir'.¹ Clay was taken from the same commonties for building purposes and the same witness, asked if any of the inhabitants of Kirriemuir 'cast clay in the North Muir, depones, that they did'.

Undoubtedly, from both appearance and utility, the eighteenth-century cottage was an unpleasant hovel. 'Their walls are alternate rows of stones and sods, and their roofs are of coarse and slender timber, covered with turf and rushes. A hole in the

1. SRO. Lyell v. Smith (EP. M.H.B. 7/7/1819) Printed defenders' Proof, 6



middle of the roof, surrounded at the top, and a little way down into the house, by a wicker frame, plastered with a mixture of straw, mud, or clay, is the only chimney. A small aperture, with a single pane of glass, and sometimes altogether open, and stuffed at night with old clothes, serves for a window.'¹ Homes of this nature were commonplace throughout Scotland. In Coldingham, before the commonty was divided, 'this town was dull and unpleasant in appearance, as all the houses were covered with turfs and divots from that moor'.² At the time of division of Coldingham Common a witness testified 'that the feuars were in use to take heather, and hoe whins in the common, also to get stones in the common and from the sea side'.³

It was not unusual for rights of servitude to be spelled out in detail as, for example, the commonty of the Hill of Alyth in which the feuars had right of 'casting fuel, feal and divot, pulling heather and broom ...'⁴ Casting fuel usually meant peat, but where this had been exhausted, then turf was a permissible substitute. It was recognised in Scots law that the phrase 'feal and divot' included rights to turf for building, thatching or fuel.⁵ The real difference between feal (or fail) and divot according to Jamieson was that 'fail is used in building the walls of an earthen house, and divot for covering it. The fail is much

1. Douglas, R., General View of the Agriculture of the counties of Roxburgh and Selkirk, London, 1813, 29

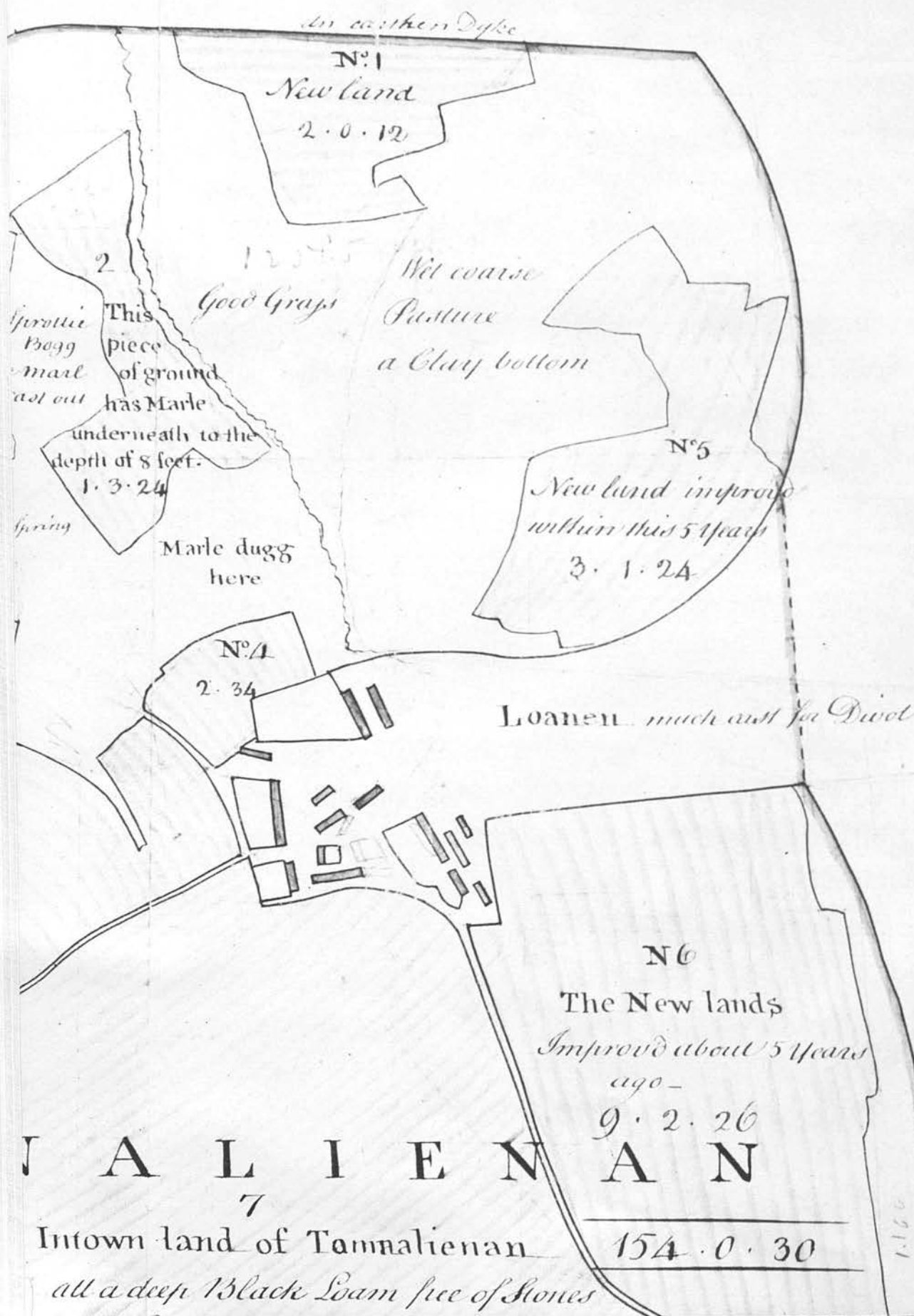
2. Old Statistical Account, xii, 47

3. SRO. Hall v. Home (EP. Dur. 2/3/1776)

4. Session Papers in Signet Library, Edinburgh, 485:16

5. Scottish National Dictionary, Feal

Pasture and Moor Community -



thicker than the divot, and differs in shape.'¹ This distinction was confirmed by Buchan-Hepburn when he discussed the uses to which the former East Lothian commonities had been put.

'The moor, or common pasturage, was treated still more harshly [than the outfield]. Sometimes this moor was common to several conterminous estates, and sometimes it was common to the tenants of one estate. But, in either case, it was termed common, from the promiscuous uses to which it was put.

These uses were threefold: 1st, pasture for the yeld stock, and a few unfortunate sheep: 2ndly, for feal, which was applied sometimes in the building of houses; and sometimes thrown into the dunghill, and mixed up with dung for manure, as directed by the more early Roman rustic writers: lastly, for divot, that is, when the skin or surface was pared off thinly, and used for roofing houses.'²

Another example of the use of turf for making manure is given on the frontispiece of this volume. 'This common is reduced to chingle and stones by digging turf and manure to the land.'³ Unfortunately, this type of use tended to destroy the commonity's usefulness in other directions. By removal of the turf, pasturage was reduced, erosion initiated and, when the time came for reclaiming the commonity for arable, the potentially rich humus layers had been lost (Plate 13 and frontispiece).

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1. Jamieson, J., An Etymological Dictionary of the Scottish Language, Edinburgh, 1808
 2. Hepburn, G. Buchan-, General View of the Agriculture and Rural Economy of East Lothian, Edinburgh, 1794
 3. See annotation below 'The Common' in frontispiece (RHP. 6098)
-

Plate 13. The loan to the township of Tomnalienan, Inveravon parish, Banffshire, which has been 'much cast for divot', c.1770 (RHP. 1793)

Fuels

The heavy reliance placed on the commonalty for fuel in those areas remote from coal is illustrated in the following submission by the magistrates and inhabitants of Fortrose and Rosemarkie in the division of the commonalty of Millbuie.

'The whole of the inhabitants of these burghs, of whatever rank or denomination, were of old, and till a recent period, altogether dependent on this commonalty for heather, peats, and turfs, which were their only species of fuel; and though the better sort of the inhabitants now get occasional supplies of coals, the lower orders, containing the great majority of the population, are still as dependent on it as the whole population were at a more remote period. Their yearly supply of fuel has, in short, been to the present day derived from it.'¹

A considerable amount of time was spent in gathering fuel. In the parish of Coldingham before the commonalty was divided the inhabitants in 'great numbers were employed all summer time in digging and preparing peats and turfs; but after they were in a great measure, restricted from that servitude, they found more profitable employment ... and were soon able to get coals for their fuel'.² However, prior to the introduction of the improved agriculture there was no money economy as such and the level was purely subsistent. In consequence, although the gathering of fuel was very labourious and tedious, as the following extract indicates, it was a natural part of the cycle of subsistence agriculture of the day.

1. Mackenzie y. Magistrates of Fortrose (EP. 23 of 5/2/1828) printed State of Process, 21

2. OSA. xii, 47

'In those days [mid-eighteenth century], the inhabitants of Fortrose and Rosemarkie had no other means of getting fuel except from Milbuy, as there was neither coal nor wood to be got there. That they used to begin cutting the turf and pulling the heather about the middle of May, and they generally began to carry it home about the 20th day of June: that, upon an average, it took them fully two months to take it home, and they commonly went with their horses twice a-day, and those who had not an early opportunity, were employed down to the end of harvest in getting home their turf and heather.'¹

The right to take peats from the commonty, in most cases, only extended as far as those peats needed for domestic purposes. This restriction was usually rendered as 'for the service of his family'. It did not mean only the proprietor's family but included his tenants as well. The line was drawn, however, when peats were sold for profit. In such cases, the Court could be petitioned by other proprietors to bring a stop to this practice.² Occasionally, as in the case of the division of Mullbuie, Ross and Cromarty, peats were used for other purposes: 'compeared James Hossack, tenant in Upper Ethie, that he recollects distinctly, when he was a boy, cutting peats in the Chanonry Moss for drying their corn'.³

1. Mackenzie v. Magistrates of Fortrose (EP. 23 of 5/2/1828) printed State of Process, 29

2. See division of the Forest of Alyth, Directory,

3. Mackenzie v. Magistrates of Fortrose (EP. 23 of 5/2/1828) printed State of Process, 42



Vether Greenhead

G R E N D N H I L D

Upper Greenhead in Ruins

Hull

G R O U N D

Hull

Hull

Hull

Hull

New called

L

I

A

D

F

Molt Pool

know

know

know

Weller Long Mofs

Mark pit Wrought by M^r Phordred

Mark pit Wrought by M^r Plummer

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

Hull

C O M M O N

M

O

I

Murder Moss

Scale of Scots Chains



Marl and lime

Where commonities possessed marl beds, this valuable fertilizer was eagerly exploited (Plate 14). Marl, a mixture of clay and limestone, was strongly recommended by Sir John Sinclair for the improvement of waste lands,¹ but he tempered his enthusiasm by a rather nebulous qualification. 'An eminent agriculturalist, who has had much experience in such improvements, has made so just a distinction between marl and lime. The property of using either, must depend on the facility of obtaining the article.'² Rarely did the presence of marl in a commonity arouse much controversy for on the most part commonities were not found on calciferous soils. We find that a limestone quarry located within a commonity, on the other hand, seemed to invite trouble. In the division of the commonity of Brownmuir, Dumfriesshire, much of the controversy revolved around the fate of the limestone quarries within its bounds which amounted to only 24 out of 1148 acres. Although these quarries had been in the uninterrupted possession of the Bonshaw family for fifty years, neighbouring proprietors demanded a share at the time of division, in 1765. A report made at that time noted that the demand for lime had increased greatly 'these last twenty years'.³ This confirms another report by the minister

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1. Sinclair, Sir J., General Report of the Agricultural State and Political Circumstances of Scotland, Edinburgh, 1814, ii, 356
 2. Ibid.
 3. SRO. Irving y. Queensberry (EP. Mack. 24/2/1770)
-

Plate 14. Marl pits on Lindean Common, Selkirkshire, c.1780
(RHP. 683)

of Cummertrees parish, in 1791, that the real rent of the parish had increased because of the 'discovery and the use of lime, and the division of the commons'.¹

Other forms of quarrying found on commonities include building stone, flagstone, and chromate of iron quarries. Hawick obtained building stone from its common (Plate 35). The feuars of Thurso possessed a flagstone quarry near Waas, in the commonity of Forss, which was actively quarried by the inhabitants at the time of

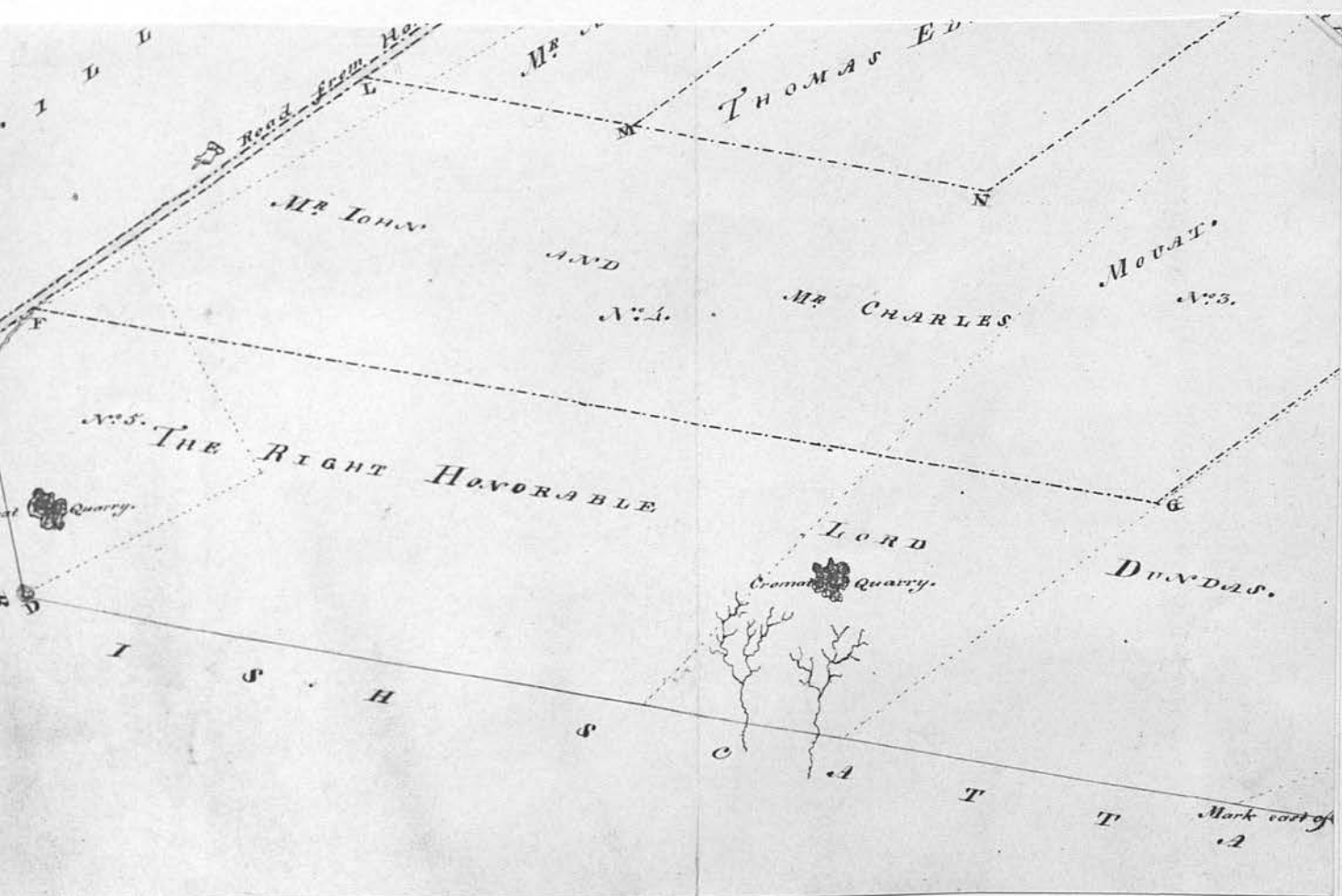


Plate 15. Chromate of iron ore quarries in the scattald of Haroldswick, Shetland, from a plan drawn by William Matheson, 1834 (RHP. 6470)

1. OSA. vii, 308

BARONY of CALLENDER



References with respect to the Quantity and Value of the fundry Parcels of Commonty.

In what part of the Commonty they lie.

No. of parcels.	References with respect to the Quantity and Value of the fundry Parcels of Commonty.	Quantity in			Value of each parcel			Amount in		
		Acre.	R.	F. Ells.	£.	s.	d.	£.	s.	d.
1.	The west portion of Reddingrig, including something more than one acre and a rood, controverted with Earl of Errol,	199	15	0	4	7	45	15	9	
2.	The middle portion of Reddingrig, lying to the east of a line drawn from burn to burn, by the Mile Pit,	110	21	0	3	4	18	8	0	
3.	That portion of Reddingrig, lying east, from the Herds Hillock to Middlerig farm, and north side of the road,	22	0	0	1	0	1	2	6	
4.	The Hanging Braes, south side of No. 3. to the burn,	4	0	0	0	4	0	1	5	
5.	That portion of Reddingrig, lying east of the line drawn from the Herds Hillock to Pirlehill, Sheep-bridge, and on the north-west side of the road leading to Redding,	17	0	0	3	4	2	16	8	
6.	The Broken Braes, on the east of Pirlehill Sheep bridge,	2	14	0	0	4	0	0	9	2
7.	The Colloch-burn Braes, north side of Leads Gout,	4	3	0	0	4	0	1	7	
8.	That portion of West-Quarterrig, anciently laboured,	12	1	31	0	2	0	1	4	10
9.	The west end of West-Quarterrig,	33	10	0	1	0	1	13	5	
10.	The east end of West-Quarterrig, to a pit in the Lone,	57	1	16	18	1	6	4	6	0
11.	The lochs and grounds in and about Redding village,	11	0	0	3	0	1	13	0	
	N.B. By three houses in Redding, built on the commonty, which the valuator is of opinion hath meliorated the commonty in the value of							17	5	0
12.	The east portion of Whitesiderig, next to Lawryte,	127	3	0	0	3	4	21	5	10
13.	The western portion of Whitesiderig, North Stand, Burn Strand,	42	3	24	0	3	10	8	5	3
14.	The Hanging Braes on south side of Middlerig burn,	5	1	20	0	0	5	0	2	5
15.	The eastern portion of Bell's rig, next to Greenhilford,	18	1	30	0	2	3	1	16	7
16.	That portion of Bell's rig lying north of Callender Dubs,	31	0	31	0	3	1	4	19	1
17.	The largest parcel of Bell's rig, to the north-west of No. 13. and 16.	108	0	0	4	4	23	10	2	
18.	That portion of Bell's rig, lying west of No. 17.	24	2	30	0	2	5	2	19	6
19.	The westmost portion of Bell's rig, west from Hareton Craigs,	16	3	0	0	3	0	2	10	3
	The portions of moss north of Professor Hunter's march lines,	85	0	0	5	0	21	5	0	
	Total, exclusive of what is controverted with the Professor,	937	2	12	18			182	13	6
20.	The Western Gardrum, and Darn Rig,	18	3	8	0	4	2	3	16	0
21.	The west end of the back of the loch, with meadow spot,	3	0	32	0	2	6	0	8	1
22.	The east end of the back of the loch,	31	0	0	0	4	2	2	5	10
23.	Benty Rig, lying south from Craigmad,	2	0	0	0	4	0	0	9	0
24.	The Eastern Gardrum,	50	3	0	0	4	0	10	2	0
25.	Craigmad, and green about it,	0	2	18	0	per ann.		0	1	8
26.	That spot of ground south from Western Gardrum, Mosses controverted with Professor Hunter,	1	2	0	0	per ann.		0	1	6
		311	1	0	0	0	6	8	0	7
	Total of controverted, Uncontroverted,	418	3	18	0			25	4	9
		937	2	12	18			182	13	6
	Grand Total,	1356	0	30	18			207	18	3

References with respect to Head-rooms.

The Right Honourable the Lord Napier, from A to B.
The Reverend Mr Bennet, from B to C.
Mr Gilbert Lawrie, from C to D.
John Eastoun, from D to E, and from E to F also.
Henry Cockburn, from F to G.
Peter Hart, from G to H.
William Gray, from H to I.
John Eastoun again, from I to K.
The heirs of John Deepie, from K to L.
Peter Hart again, from L to M.
James Gaff senior's house and yard, N.
William Gray again, from O to P, from M to O no title.
The heirs of John Deepie again, from Q to R, from P to Q, no title.
Lord Napier again, from R to S.
William Braid, from S to T.
The heirs of John Deepie again, from T to W.
James Gaff senior again, from W to U.
The heirs of John Deepie again, from U to V.
The heirs of Andrew Gray, from V to X.
Andrew Henderfon, from X to Y.
Thomas Groffart, from Y to Z.
The heirs of Henry Cowie, from Z to &.
Andrew Henderfon again, from & to O, at Colloch-burn.

The barony of Callender lies adjacent from O, at Colloch-burn, all the way up to the west end of the moss at Green-craig.

Middlerig head-room is plain from the plan.



Plate 16 (above). Duke of Hamilton's coal pit beneath the commony of Reddingrig Muir, Falkirk, Stirlingshire, 1761 (RHP. 3532)

Plate 17 (opposite). Commony of Reddingrig Muir, 1773, showing the coal pits south of Shielhill farm that are given in detail in above plate (RHP. 3919)

division in 1830.¹ Likewise the commonty of Abernethy supplied the town of Abernethy with building stone.² A most unusual type of quarry was to be found in the scattald of Haroldswick, Zetland, where chromate of iron ore was found (Plate 15). Considerable controversy arose over whether or not these ores were common property, for at the time the mineral was 'of some value'. Finally it was decided to leave minerals as common property to all who had an interest in the commonty and that the proprietors of ground in which minerals were worked should be entitled to compensation for surface damage done in working and transporting the minerals.³

Coal shows stoup-and-room underground workings (Plates 16 and 17).

In the Carboniferous lowlands of Scotland a few commonties overlay coal-bearing strata. In most cases the mineral rights were in the hands of only one proprietor, but where this was not the case there was considerable pressure for division of commonty. The commonty of Reddingrig, situated to the southeast of Falkirk, occupied ground containing several rich coal seams; pits belonging to the Duke of Hamilton had been working for over fifty years when the commonty was divided in 1773.⁴ At the division the duke claimed that, as the superior, he had right to the coal in the shares allotted to the other heritors. The court found, however,

1. SRO. Lord Advocate y. Sinclair (EP. 134/12/1834)

2. SRO. Henderson y. Malcolm (EP. 2/6/1821)

3. SRO. Spence y. Dundas (EP. 136/3/1840)

4. SRO. Hunter y. Hamilton (EP. Mack. 11/3/1773)

that there were three classes of heritors: first, there were those who had right of common property in the muir; secondly, those who had right of common property but with reservation of coal to the superior; and finally, those who had simply a right of servitude. Of the three, only those who had right of common property without reservation, had a right to coal in their share of the commonty. The duke was allocated the right of the coal in the other two classes 'and it is believed it will in the event be found that the duke will have right to almost the whole coal in the commonty, his reservation being so general, and so few having an unlimited right of common property'.¹ Plans made for the division show coal pits south of Shieldhill farm and the larger one shows stoup-and-room underground workings (Plates 16 and 17).

Kelp

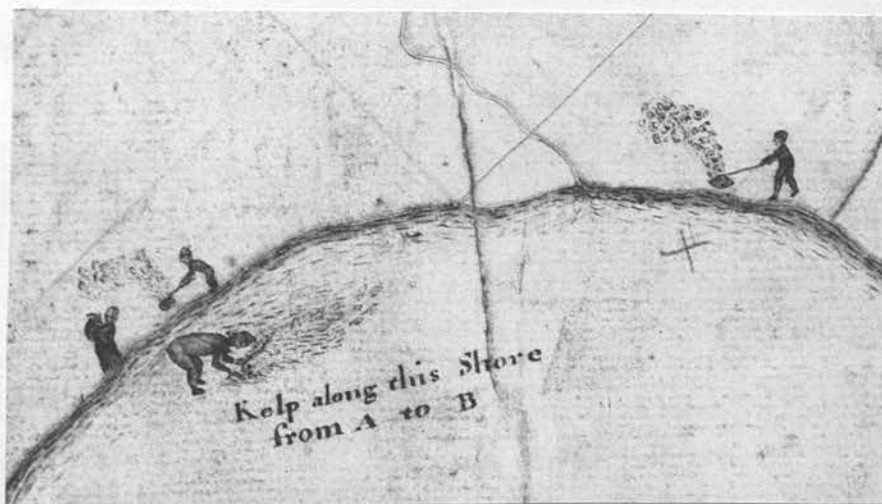
Where commonties included the coastline, as many did in Caithness, Orkney and Zetland, they often carried a right to sea-ware or kelp. This right was quite specific: 'pasturing cattle, casting feal and divot and cutting sea ware or tang on the shores thereof [scattald of Houlland and Hamnavoe] and making kelp, and using other acts of commonty'.² The kelp industry brought a considerable degree of prosperity to the remote counties of Scotland until its collapse in the 1830s,³ and prior to this

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1. SRO. Hunter y. Hamilton (EP. Mack. 11/3/1773) Act and commission, pp. 418-9
 2. SRO. Spence y. Zetland (EP. 35/12/1858)
 3. Clow, A., and Clow, N., 'The Natural and Economic History of Kelp', Annals of Science, vol. 5, No. 4, July 1947, 297-316

time the value of a commonty was enhanced if it included a kelp shore. 'The procurator for the pursuer produced an execution against witnesses, cited to this diet, for proving the quality of the kelp-shores of the island [of Stroma], and the average produce thereof, and craved the commissioner might be pleased to allow them to be adduced for examination.'¹ The witness was then examined:

'Whereupon compeared Hugh Rosie, tenant in Stroma, married man, aged 67 years, who being solemnly sworn, examined, and interrogated, deponed, that he is a native of the island of Stroma, and has resided there all his lifetime. Deponed, that for upwards of five and forty years he has been in the practice of making kelp, as well on the shores of this island, as in other places along the coast of Caithness. Deponed that, upon an average of years, the shores of the Nethertown and Overtown of Stroma, commonly called Plain Shore, produce 8 tons of manufactured kelp, yearly, at a rate of 21 cwt. to each ton ... Deponed, that there are other pieces of shore belonging to the island, of difficult and precarious access, from which kelp-ware has been taken for the last two or three years, when kelp sold at an uncommonly high price ...'²

Plate 18. A small scene from a William Aberdeen plan, dated 1769, showing methods employed in the kelp industry (RHP. 6098)



1. SRO. Caithness v. Sinclair (EP. B.D.R. 24/2/1820)

2. Ibid.

time the value of a community was enhanced if it included a kelp

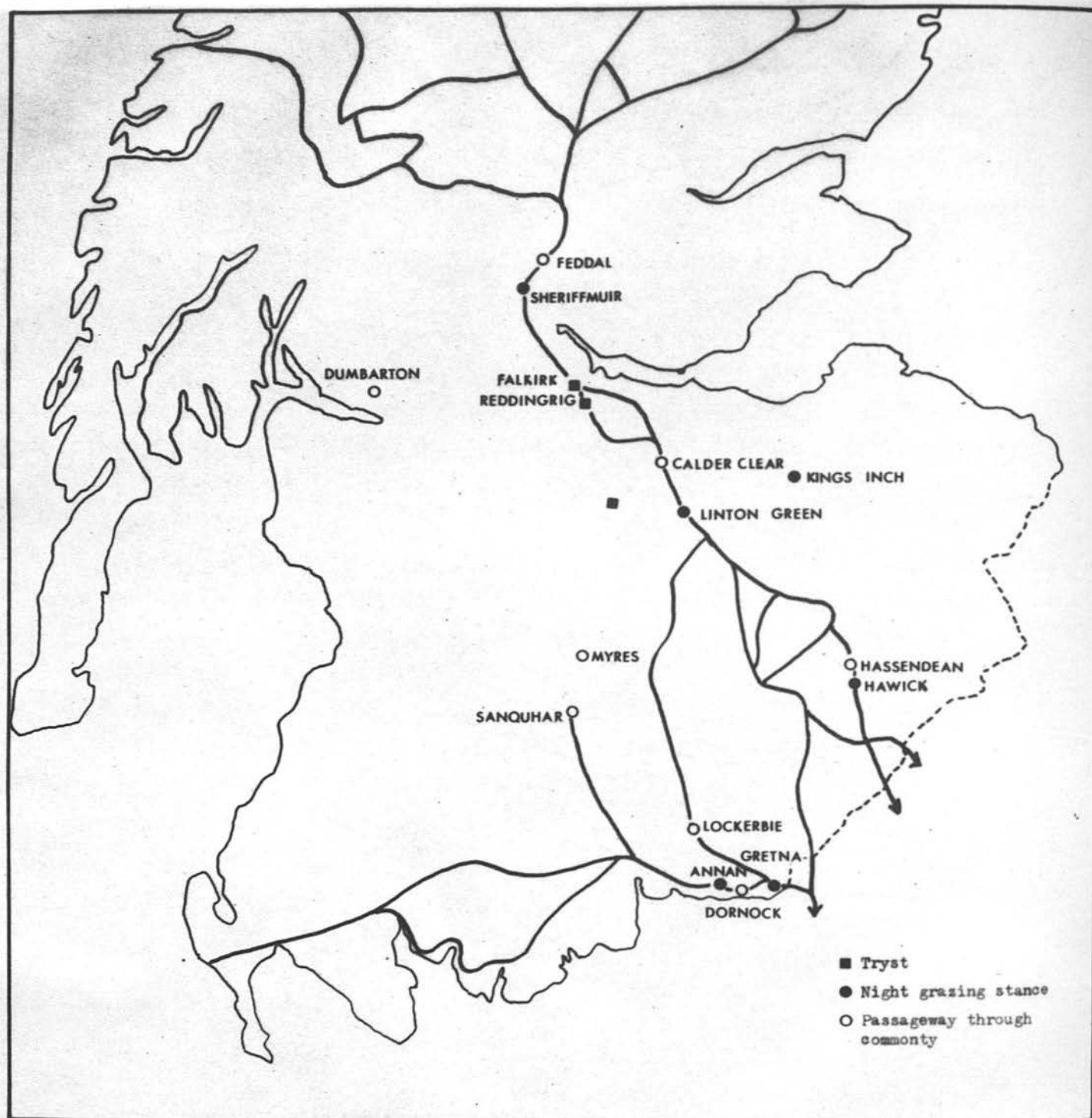


Fig. 7. Communities and drove roads in Southern Scotland (Drove roads after Haldane)

Commonties and drove roads

Commonties were used by drovers as route-ways and overnight resting grounds on their long journey southwards. A network of drove roads grew up in Scotland linking the Highland grazing grounds with the populous markets in England.¹ Ambiguous ownership of commonties led to their early exploitation as drove roads and the presence of such roads led to further complexity when division came about (Fig. 7). The fact that many commonties were being divided after 1750 contributed greatly to the decline of the droving trade in Scotland. 'Despite the growing practice of demanding payment for nightly grazing [on private property] there still remained many areas of common land where the night's grazing of a passing drove was unchallenged, and probably in many cases free, but as time passed this privilege too was attacked.'² Haldane goes on to show how the application of the Act for dividing of commonties effectively strangled droving traffic. Nightly grazing stances had to be at intervals of about ten miles as cattle and sheep were unable to cover any greater distance.

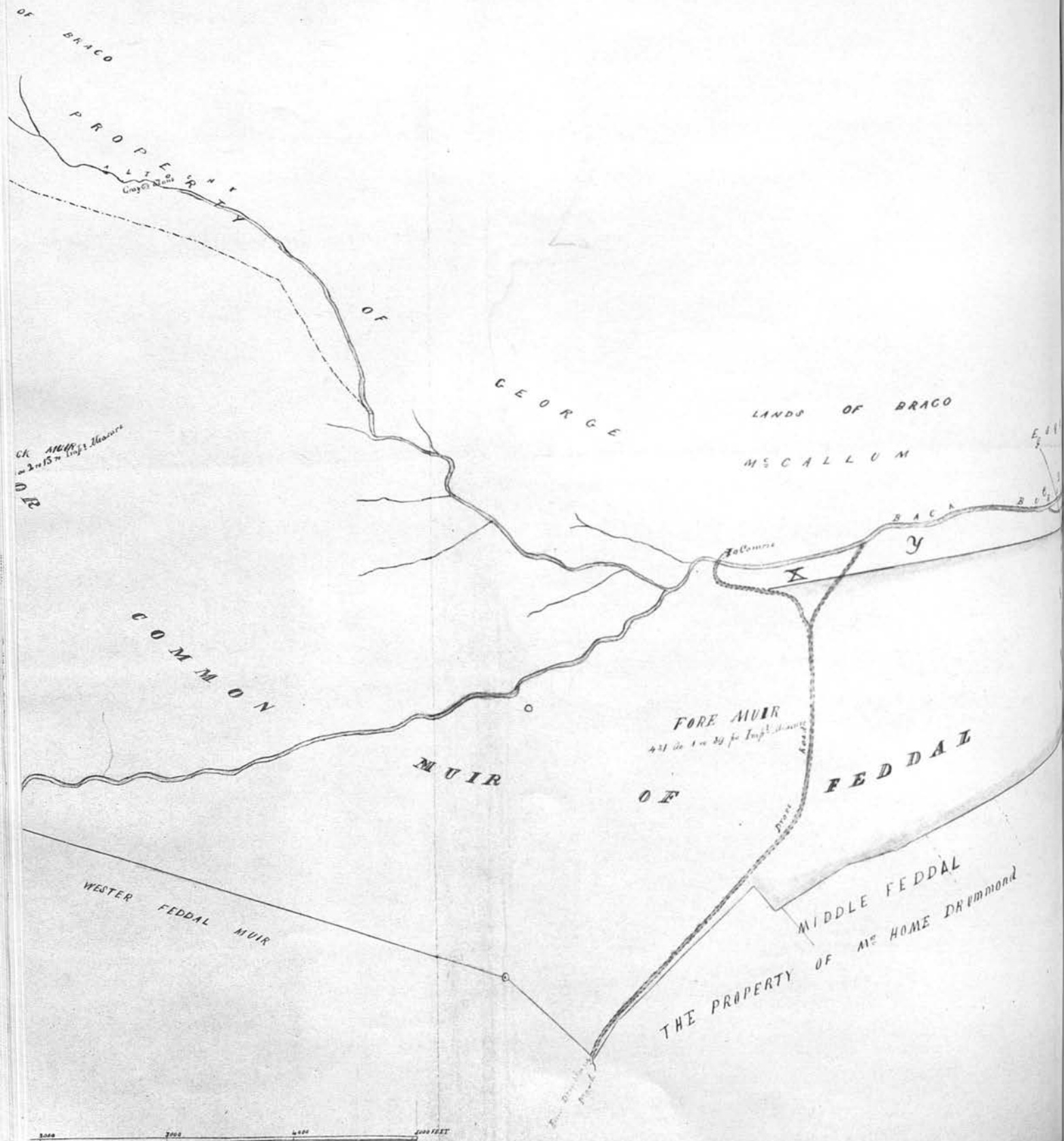
Commonties such as Linton Green and Gretna provided an important link in a chain. When they were divided, even if a drove road was left, the cattle were deprived of rest and nourishment. John Mackie, a witness in the division of the commonty of Gretna, related how he used the commonty when he was a cattle dealer.

1. Haldane, A.R.B., The Drove Roads of Scotland, London, 1952 [map]

2. Op. cit., 211

STATE OF TEXAS
COMMON MUIR OF FEDDAL

1884



'For several years he was a dealer in cattle and sometimes bought cattle at Crief and Stirling and carried them to Carlisle which he did every year for the first seven or eight years of his possession he used to keep them over night and onetime he kept his part of a drove upon the said commonty from a Tuesday till Thursday and that upon this occasion the other persons concerned in the foresaid drove after the first night took away their own cattle and the deponents remained as aforesaid till the Thursday when he carried them off to the Carlisle mercat. And depones that nobody disturbed his cattle when they were on the said commonty ... nor did they pay any consideration for their cattles remaining there that night because he thinks they knew to whom they belonged because he has known several droves lie all night on the said common and pay nothing.'¹

Other commonties provided a route-way only and overnight grazing was not permitted. Even so, when these were divided the drovers were forced to seek another road and this became increasingly difficult as improvements spread. Sometimes, however, land was set aside for a drove road across the former common; in the case of Dornock Common 17 acres were set aside.² The road that bisected the commonty of Hassendean after division is shown on the first edition Ordnance Survey Six-Inch maps as a drove road.³ The general decline of droving traffic in the main was complete by the time some of the later divisions were being undertaken. The Muir of Feddal was crossed by a drove road which was little used at the time of division in 1854 (Plate 19). Further evidence

1. SRO. Maxwell v. Annandale (EP. Mack. 9/8/1770)

2. SRO. Queensberry v. Stormont (EP. Mack. 17/1/1789)

3. See Division of the commonty of Hassendean, p. iv

showing the decline in droving prior to, rather than because of, division of commonty is to be found in the division of King's Inch, Channelkirk parish, Berwickshire. Although it consisted of only 17 acres, King's Inch was an important resting place for drovers on their way south. In the 1860s, when droving had ceased to be practised, this privilege was taken up by 'tinkers, gipsies, muggers and tramps, and at times as many as one hundred people would be living on the commonty'.¹ In order to remove this 'pestilence', a summons of division of commonty was raised in 1870 and it was divided in the following year.²

The use of commonties for drove roads and their contemporaneous decline was symptomatic of the great upheaval which people, landscape, agriculture, industry and transport underwent in the face of the great technological changes that permeated throughout Scotland as the eighteenth century gave way to the nineteenth.

Although division of commonty led to the disappearance of drove roads formerly passing through their bounds, a completely new road pattern emerged at the moment each commonty was divided. One of the commissioners' duties was to set off sufficient roads to accommodate contemporary traffic. When the commonty of Wilton, Roxburghshire, was divided the Court ordered that the existing roads were to be incorporated into the scheme of division:

'The highway from the ford where the description [of the boundary of the commonty] begins at the confluence of the Gala and Stintin Burns going northeast over the east end of the

1. Allan, A., History of Channelkirk, Edinburgh, 1900, 637-8

2. SRO. Bothwick y. Tweedale (EP. 8/4/1871)

Plate 20. St Boswell's Fair road passing through the common of Wilton, Roxburghshire, 1764 (RHP. 181)



Plate 20. St Boswell's Fair road passing through the commonty
of Wilton, Roxburghshire, 1764 (RHP. 181)

1. SRO. Langlands v. Buccleuch (EP. Dal. 20/11/1765)

Fairs

Several fairs are recorded as having been held upon commonities. When the commonity of Langholm was divided in 1759, the people of the town claimed that the fair had been held upon it from time immemorial. The fair held annually on the '15th day o' July auld style', was principally for sheep, lambs and wool.¹ In the course of time it became associated with the common riding, which had been instituted after the division of the commonity of Langholm to protect the town's allotment, though there was no necessary connection between them. St Boswell's fair, the road to which passed over the commonity of Wilton (Plate 20), was held on the town's green. When it was divided in the early years of the nineteenth century, 'the lord of the manor retained the right of holding a fair annually over the whole of the common'.²

From the early eighteenth century the commonities of Whitesiderigg and Reddingrigg were the venue of the Falkirk Tryst. Drovers coming to market were charged tolls by tacksmen of the Duke of Hamilton from 1717 onwards.³ The complex legal proceedings which led up to division in 1773 forced the Tryst to move to a site called Rough Castle to the west of Falkirk.⁴ Not only were trysts great cattle markets, but they also attracted the peddler and packsman. So few markets were held on commonities because Royal Burghs possessed a virtual trading monopoly and their common lands had a totally different history (see Chapter V).

1. Hyslop, J., Langholm as it was, Sunderland, 1912, 532

2. NSA, iii, 108

3. SRO. Hunter v. Hamilton (EP. Mack. 11/3/1773)

4. Haldane, A.R.B., The Drove Roads of Scotland, London, 1952, 138

Other functions

Occasionally commonities provided other functions - fields for drying peat, bleachfields, clay pits, mill dams and water gangs - that were important in the subsistence economy of the day. The following deposition made by John Dron, weaver in Abernethy, in 1821 at the division of the commonity of Abernethy illustrates the variety of function of a single commonity:

'He has seen Mr Brown's cow and horse pasturing on the common hill under division, and attended by a herd. That the deponent's uncle was a servant with Mr Brown during his incumbency; and the deponent has seen him frequently cutting and carrying off whins from the said common, for the purpose of bottoming his stacks when building his corns. That Mr Brown had a lint dam in the common, in which he watered his lint when he had lint growing. That in his younger years he recollects to have seen his uncle driving clay, for the purpose of repairing Mr Brown's barn floor.'¹

The commonity in pre-enclosure Scotland held an important place in the peasants' everyday life. It was essential in providing vital elements of a subsistence economy - food, fuel and shelter - at the sole expense of peasant labour. It was also important in providing a reservoir of land that could be exploited in response to fluctuations of population without any formal restrictions, as were found with private property. This gave a degree of flexibility in a system of agriculture that was essentially inflexible. The inertia of the Scottish agriculturalist up to the eighteenth century gave way to an energetic transformation of his agricultural system. As the functions of the commonity fell away in the face

1. SRO. Henderson v. Malcolm (EP. 2/6/1821)

of the agricultural revolution, so the problems of multiple ownership increased. Ownership of land changed from a status symbol to a means of producing a greater income. The *raison d'être* of the *commonties* no longer existed, and so they were divided. assumption often made is that division of *commonty* was a part of the Agricultural Revolution in Scotland. To what extent this was so is one of the questions raised in this thesis. Handley states that the first stirrings of change in agricultural methods were only just discernible in 1770.¹ This raises the question as to the place of the divisions before this date and, especially, to the motives behind the 1695 Act.

Although at first glance the Act 1695, cap. 69, appears to be the most significant date related to the dividing and enclosing of Scottish common lands, in fact it marks the tidying up of a process which was well established at that date. In the beginning of the seventeenth century the *commonty* played an important part in rural Scotland.² With the few exceptions discussed below, there was no question of a general movement for division of *commonty* at this date. Indeed, their continuance was guaranteed by statute: 'Persons who have cultivated or enclosed the King's common, muir, or other *commonties*, to be tried by way of molestation, and to restore the same within a year and day: if they fail, they shall be decreed to have committed perjurie'.³ An agreement made only two years after the passing of this Act confirms that

1. Handley, J.E., The Agricultural Revolution in Scotland, Glasgow, 1963, 1.

2. See above, Chapter II.

3. AP3, 1698 cap. 13.

CHAPTER III

Division of Commonly

Prior to 1695

An assumption often made is that division of commonly was a part of the Agricultural Revolution in Scotland. To what extent this was so is one of the questions raised in this thesis. Handley states that the first stirrings of change in agricultural methods were only just discernible in 1770.¹ This raises the question as to the place of the divisions before this date and, especially, to the motives behind the 1695 Act.

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1. Handley, J.E., The Agricultural Revolution in Scotland, Glasgow, 1963, 1

2. See above, Chapter II

3. APS. 1600 cap. 13

the traditional functions were being maintained and well regulated. In 1602 a contract between John Cathcart of Carlton and Allan Cathcart of Watterheid was entered into to regulate their mutual use of Sauchoch Hill, which was common to both, 'for observation of gude ordour and equall nichtbourheid'. Every indweller and tenant was allowed to pasture 'nolt, scheip and horss' on the common in proportion to their holdings which were to be 'hirdit and keepit be ane common hird' who was to let no beasts feed within two falls of the common dyke of Mains of Troweir. Each tenant had right to win 36 'car full of turffis' and 72 'leadis of peittis' yearly. Watterheid and his heirs, if occupying the Mains of Troweir, could have 'sufficient furnitour' of 'turffis and ruch peittis for thair awin hous' and if they had a 'fischer' he could also have liberty to win 20 'leadis of ruch peittis' yearly.¹

Sir Thomas Craig, a famous Scots lawyer, writing his Jus Feudale about the beginning of the seventeenth century,² indicated that the current practice tended towards status quo as far as division of commonties was concerned: 'I have known it to be debated whether rights of common pasturage can be made subject to division among persons jointly entitled thereto ... It is to be observed that, both by the Law of England and by the Civil Law, no person can be compelled to remain in the position of a co-owner along with others³ ... Yet in Scotland the general rule that

1. SRO. Cathcart of Carleton muniments (GD.117/85) 3. Not true

2. Sir Thomas Craig of Riccarton's Jus Feudale is undated. He died 26 February 1608, so that his work must have been written about the beginning of the seventeenth century

persons who are jointly entitled to the possession of any subject, or who are interested in any subject immemorially dedicated to their common use by long course of uninterrupted possession, are not allowed to break up the state of common possession unless all concur in so doing, applies to any proposal to divide common pasturage and commonties.¹

By mid-century there was a significant change in attitude towards the preservation of commonties: the Act of 1647 indicated that there were widespread encroachments on the commonties and division was recognised as a way of preserving proprietors' rights. 'Complaint by heritors in several shires that their neighbours make use of the commonties, and refuse to allow them to be divided; remit to the Lords of Session to decide complaints of the kind, and to prescribe the most equitable way of division; where the court finds that a commonty should be divided, ordained that it shall be done with consent of the superior and of the majority of the heritors interest.'² Thus in just under fifty years the decision as to whether to divide or not passed from all to majority. Yet exemption from the Act was obtained by royal burghs and such large landowners as the Duke of Hamilton, the Earls of Loudoun, Haddington, Dalhousie and Roxburgh, and Maxwell of Nineweall and Sydserf of Ruchlaw.

Any remarks relating to division of commonty prior to 1695 can, at present, only be classed as provisional since source material is extremely scarce. Only five cases of division of

1. Clyde, J.A. (ed.), The Jus Feudale by Sir Thomas Craig of Riccarton, Edinburgh, 1934, 539

2. APS. 1647, c. 430

**DIVISION OF COMMONTY
PRIOR TO 1695**

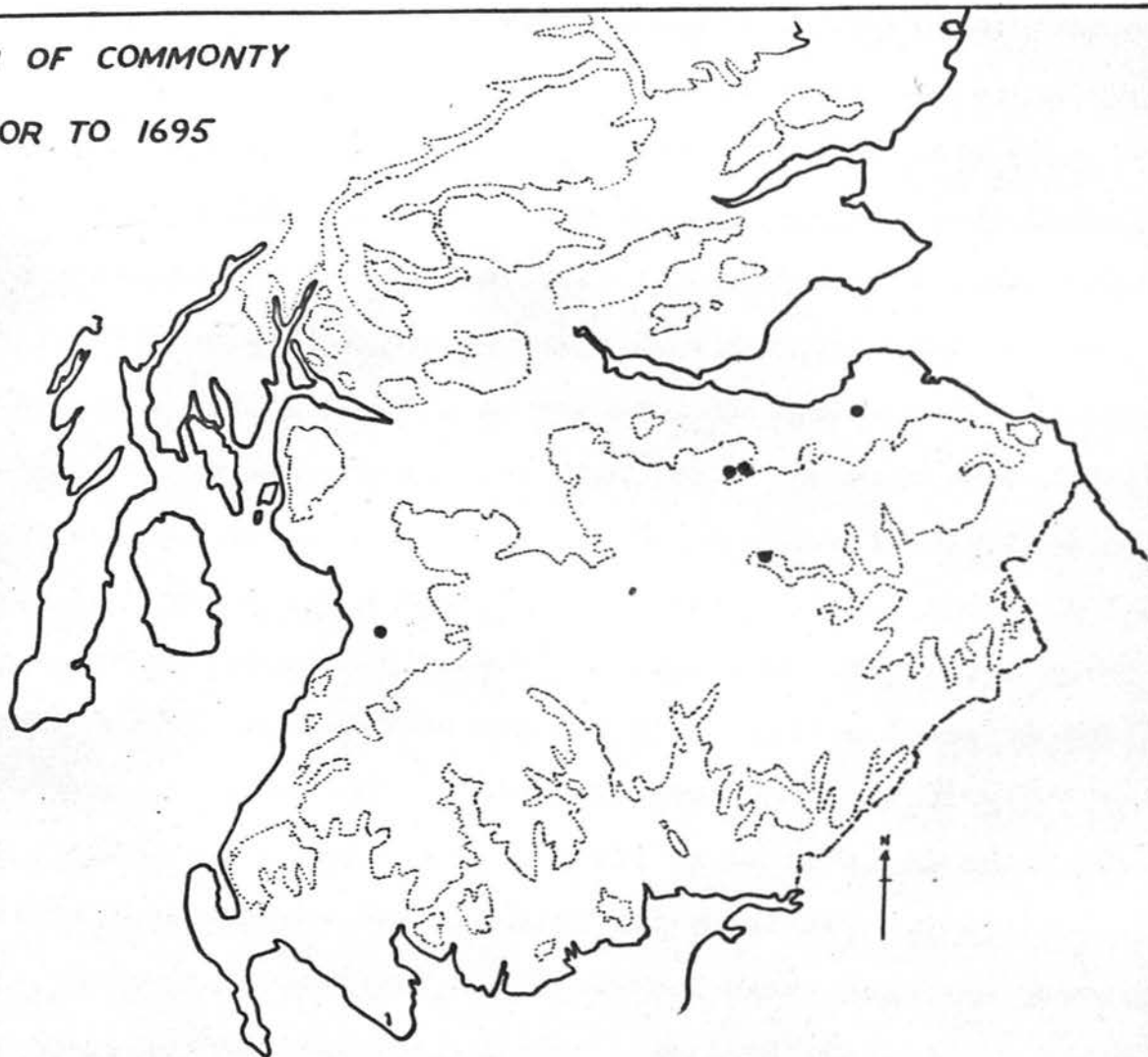


Fig. 8. Division of commonty before 1695. Each dot represents a commonty or burgh common of which documentary evidence of division has survived.

commonty prior to 1695 have been discovered (Fig. 8).¹ It is evident from these few cases that the procedures used by the Court of Session after 1695, i.e. basing division of the valuation of the heritors' lands, surveying the boundaries and dividing the commonty by taking consideration of the various quality of soils, were used to varying degrees before 1695. However, it is not being claimed here that there was any formal system. In fact, it seems to have been an extremely informal process which varied from commonty to commonty.

The earliest reference so far discovered to a division of commonty relates how the Earl of Lennox proceeded to divide up the common lands of his barony of Tarbolton, Ayrshire, in 1500.² His procurator summoned all the tenants to appear three days later and Lennox signed a formal statement that he had duly met them and had wished them to have a division of the common land. He also forbade the use of the common until the division had been made, and told them to meet again within a month, when the division would be made by judges and arbiters chosen by both parties. It is the latter point which bears close relationship to the appointment of a commissioner in the post-1695 cases. Little else is known of this division but it appears to have been successfully concluded.

-
1. This distribution must be treated as only a provisional attempt. The literature of sixteenth and seventeenth-century Scotland may yield more examples, but an examination of these sources would have been beyond the scope of this thesis.
 2. Bain, J., and Rogers, C. (eds.), Diocesan Registers of Glasgow, London, 1875, i, 321

community prior to 1623 have been discovered (Fig. 9). It is evident from these few cases that the procedures used by the Court of Session after 1623, i.e. bearing division of the valuation of

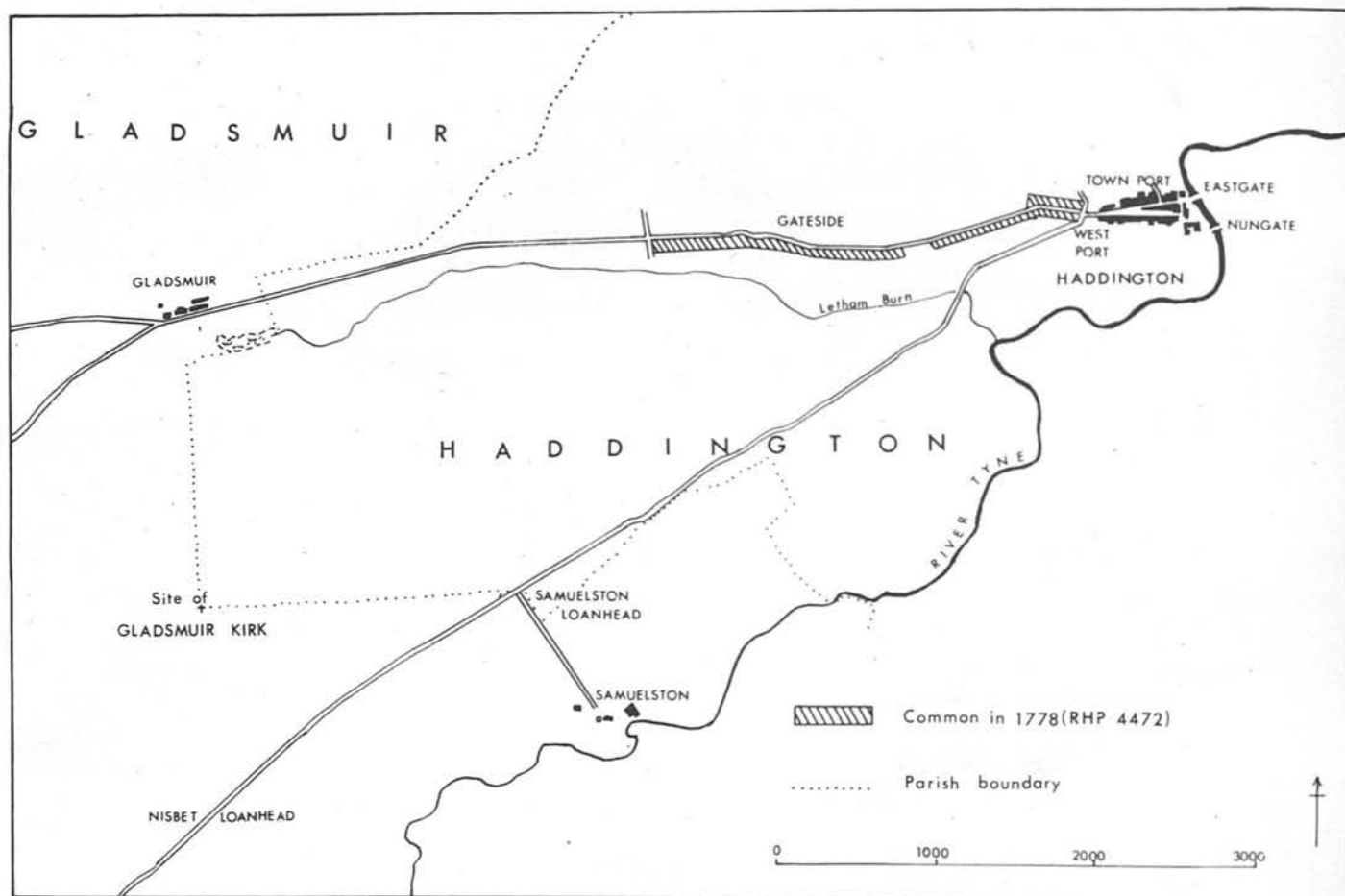


Fig. 9. The ground formerly occupied by the Common Muir of Gladsmuir, divided in 1623, showing place-names related to common

attempt. The literature of sixteenth and seventeenth-century Scotland may yield more examples, but an examination of these sources would have been beyond the scope of this thesis.

S. Bain, J. and Rogers, C. (eds.), *Massacre Registers of Glasgow, London, 1675, 1, 321*

The next example, well over a century later, concerns the division of Gladsmuir in January 1624. It appears that the boundaries of the commonty had been in dispute at an earlier date as there is extant an instrument of perambulation dated September 1430.¹ The record of the division survives in a copy of a contract between the Earl of Montrose and the provost and bailies of Haddington.² From the tone of the document it appears that the earl was the active pursuer in this division which was carried out in a spirit of 'continuing love and friendship' so as to prevent 'such trouble and inconvenience as heretofore have been bred process of law, slaughter and many harms between the magistrates and inhabitants of Haddington and the heritors of the lands of Byres and Samuelstoun'. However, the division had many of the ingredients found in post-1695 cases: the bounds of the commonty were proved in a 'process of perambulation' using elderly witnesses who, 'in all past ages in memory of man', supplied the topographical knowledge in an age without plans. The dispute was also heard before the Justice General, a figure formerly important in the Court of Justiciary, and his deputies. When the boundaries of the moor had been agreed, it was divided by a line drawn from north to south on land which 'lies waste' at a point called the Mound or Mort of Gladsmuir. Westwards, the lands were given to the earl of Melrose and eastwards to the burgh of Haddington. The earl retained the 'liberty and use of Gladsmuir Loch existing within that part of the muir remaining with the burgh for watering

1. SRO. Haddington Burgh Records (B.20/11)

2. SRO. Douglas Bequest (GD.98/6/16)

sheep and horses'.¹ Access was guaranteed by the creation of a loan from the earl's property to the loch. The original extent of the commonty can never be accurately discovered but surviving place-names and other features, including the former loan from Haddington,² indicate that it covered many hundred acres (Fig. 9).

The position of commissioner was a formal appointment after 1695, but prior to this date it appears that it could be held informally by a suitably qualified person. Thus when in 1659 Alexander Menzies of Culterallers desired that White Common in Culter parish, Lanarkshire, should be divided, he requested a friend, Andrew Hay of Cragneithan, to act as arbitrator.³ Andrew Hay 'rode round about White Common and marked the controverted bounds'. Next day he nominated four local farmers, David Somervell, James Paterson in Bigger Sheills, John Kello in Kilboche and John Porteous in Nisbet to 'compense quantity with quality' of the soils of the common. A month later he drew a draught plan of the common and worked out that it covered 196 acres and then divided it according to pound land (valued rent). Although Hay performed all the functions, the steps taken were similar to those of eighteenth-century cases. The participants were all local men obviously working in harmony and trust. There seems to have been no resistance to the division of rural commonties, but when a common belonging to a burgh was involved those manoeuvring for its control would use any means, including bloodshed, to gain their ends.

1. SRO. Douglas Bequest (GD.98/6/16)

2. RHP. 4427, 4428

3. Reid, A.G. (ed.), 'The Diary of Andrew Hay of Cragneithan 1659-1660', Scot. Hist. Soc. (1901), 39, 130-1

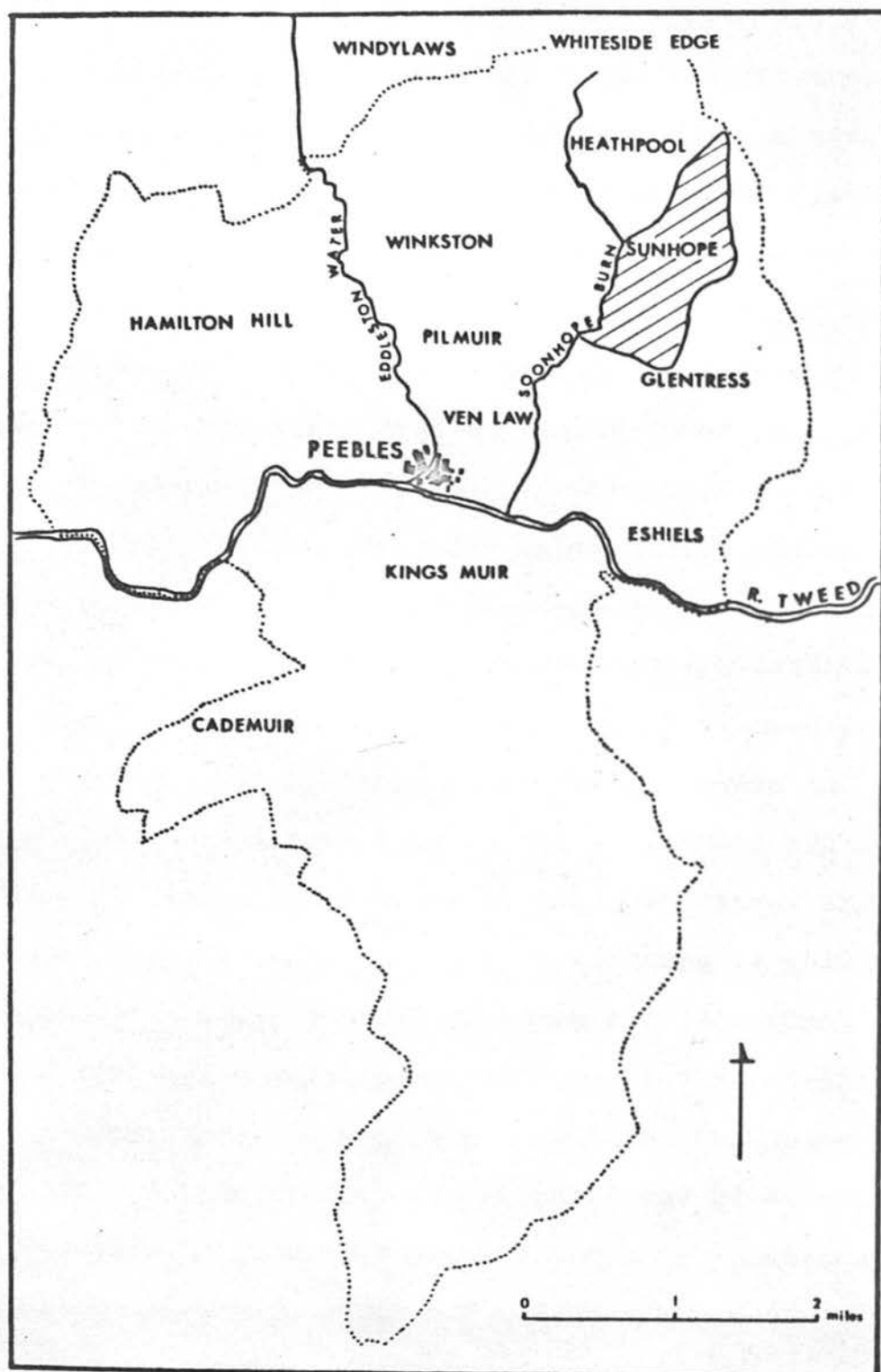


Fig. 10. Commonlands and burgh commons in the parish of Peebles.
Commonty of Sunhope (Soonhope) shaded to show extent (RHP.6316)

Date?

The numerous lands to which the burgh of Peebles had servitude were quite extensive (Fig. 10).¹ Buchan has shown that disputes had arisen over peat-cutting rights as early as 1262.² Four pieces of land appear in all the charters - Cademuir with Common Struther, Hamilton Hill, Venlaw and Glentress: all except the last, for which the town claimed pasture rights only, were based on the right of property. The example of Cademuir illustrates how long and drawn out a dispute could be: Cademuir according to the 1518 charter had been in the possession of the town since 'the first infeftment of our burgh'.³ In 1456 the town council decided to soum it to the burgesses; yet a few years later, in 1484, John Gladstones claimed the whole of Cademuir as his own property. The matter was not settled until 1506 after there had been fights both on the moor and in the law courts. Eventually, the burgh retained possession. About 1605 the letting was more carefully organised and the 'practice began of feuing soums to the inhabitants on condition that these soums were annexed as a pertinent to a tenement of land in the burgh'.⁴

From 1625 there was a struggle for the sole occupation of Cademuir with Scott of Hundleshope. Scott had obtained a royal charter in 1618, which granted him a commonty and common pasture on Cademuir. Once more there was fighting on the land and in the courts, but again the burgh remained in possession.⁵ Throughout

1. See Directory, 186-90

2. Buchan, J.W., History of Peebles, Glasgow, 1925-7, ii, 219

3. Op. cit., ii, 220-40

4. Op. cit., ii, 227

5. Op. cit., ii, 228

the eighteenth century there was trouble over the title to the land and it was only resolved in the 1830s when the heritors bought a charter and then sold the lands at a considerable profit; this transaction was a private arrangement outwith the 1695 Act.

Although burgh commons were excluded from the Act, this did not prevent Alexander Stevenson and James Hay from raising summonses of division of commonalty against the burgh of Peebles for the division of Winkston and Soonhope commonalties in 1773 and 1779 respectively. The latter case was one of collusion in which it had been arranged that the burgh would give up its claim to Eshiels Common in exchange for Dr Hay's rights to Soonhope. To accommodate this, Hay had to bring about an action of division of commonalty against the burgh, although this is expressly forbidden by the Act. This latter fact did not signify since the arrangement was concluded to the satisfaction of both parties.¹

These examples from Peebles illustrate how long a division of common lands could be postponed, especially in the case of burgh lands which naturally had numerous interested parties. Although the disputes lasted centuries, the concept of private property was only strong enough in the eighteenth and nineteenth centuries to remove them from the control of the burgh. As shown above, Peebles was a typical example in losing its burgh lands, but rather unusual in the tenacity of its magistrates, who preserved the lands over many centuries.

The final examples are of the commonalties of Halls and Penicuik which were divided in 1687 and 1695 respectively and were thus

1. See Directory, 187

Act Concerning
the Dividing of
Commonities.

Our Sovereign Lord with
Advice and Consent of the Estates of Parliament
for preventing the Disorders that arise about Com-
monities, And for the more ease and expedite De-
ciding thereof, in time coming, ^{Excepting the Commonities} Statutes and
Ordinances, That all Commonities, belonging to his
King and Royal Burrowes, That is all that be-
long to his Majesty in propriety, or Royal Burrowes,
in Burgage, may be divided at the instance of any
having interest, by Summons raise against all per-
sons Concerned, before the Lords of Session, who
are hereby Impowered to discuss the Relevancy,
and to determine upon the rights and interests of
all parties Concerned And to value, and divide the
same, According to the value of the rights and
interests of the several parties Concerned And
to Grant Commissions to Sheriffs, Stewards
of Regality and their Deputies, Justices of peace,
or others for perambulating and taking all such
necessary probation Which Commissions shall be
reported to the said Lords, and the said processes
ultimately Determined by them And where
Matters shall happen to be in the said Commonities
With Power to the said Lords, to divide the said
Matters amongst the several parties having interest
therein, in manner foresaid; Or in case it be In-
structed to the said Lords That the said Matters
can not be Conveniently divided His Majesty
With Consent foresaid Statutes and Ordinances
That the said Matters shall remain common
with free use and mine thereto, whether Divided
or not, Declaring also, That the interest of
the Heretors having right in the said Commonities
shall be estimated according to the Valuation of
their respective lands or properties And that
Divisions are appointed to be made of that part
of the Commonities that is next adjacent to each heretors
property.

the last known commonities to be divided before the 1695 Act. These two commonities lay on the glacial outwash deposits southwest of Penicuik. It was, and still is to a large extent, extremely poor land. In 1687 the commonity was the subject of the first known plan of a Scottish commonity (Plate 2). Grievances over the use of the commonity and its marches flared up some twenty years earlier, when in 1664 Sir John Clerk of Penicuik wrote a memorandum regarding its limits.¹ When the dispute came to a head in 1686-7, Sir John and Lord Rosse settled the matter between them and drew up a settlement including a rough sketch.²

The Act of 1695

On the 16th of July 1695, an Act was passed in the Scottish parliament, entitled 'An Act concerning the dividing of commonities...' (Plate 21).³ This marked the end, rather than the beginning, of a long series of Acts strengthening an individual's rights of property. By the Act of 1669, the boundaries of estates could be rationalised and straightened, enabling an owner to know the exact bounds of his lands.⁴ In 1695 an Act⁵ was passed which enabled runrig and other mixed lands to be divided into convenient lots and

1. Clerk of Penicuik muniments (GD. 18/1333)

2. Op. cit. (GD. 18/1338, 1339)

3. APS. 1695, c.69 4. APS. 1669, c.38 5. APS. 1695, c.36

Plate 21. 'Act concerning the dividing of commonities ...' from the original manuscript of the Acts of the Parliaments of Scotland (Scottish Record Office, APS. 1695-1696, p. 125y.)

enclosed and the Act for the division of commonties was passed a short while later. 'These wise acts leave hardly anything to be wished for on the subject of inclosures.'¹ This indeed was true, for so effective were they that between their passing and the year 1900, half a million acres of common land was divided and enclosed with little or no fuss.

What was the social, political and economic atmosphere of Scotland like during the period that saw so many acts passed for rationalising the land tenure system? The latter years of the seventeenth century in Scotland were a time of rapid change: the Darien scheme had been launched and failed, the Revolution of 1689 had secured the protestant succession to the British throne, agriculture had suffered from some disastrous years, and trade was suffering from exclusion from English markets. The Estates of Scotland were called together in March 1689, a little under a year after the accession of King William and Queen Mary. The Estates were turned into a parliament three months later and this body has been uniformly recognised as a legitimate assembly of the legislature, the Acts of which have obtained a place in the chronological series of the records of the parliaments of Scotland.² This opened an extraordinary phase of parliamentary life in Scotland. The Acts of the first, second, third and fourth Parliaments, which were held in the years 1689, 1690 and 1693, clearly reflect the unsettled state of the country at the time. Defence and military affairs were the primary consideration,

1. Singer, Dr, General View of the Agriculture of the County of Dumfries, Edinburgh, 1812, 145

2. APS. Introduction

but towards the end of this period a new note crept in, when the greater and lesser gentry and the royal burghs received grants benefiting their own vested interests.

Thus, In 1695, however, a distinct change may be seen in the aims of some of the Acts passed: there were important economic measures intended to stimulate trade, as well as legislation involving the long-term benefit of the countryside - protection of grazing next to sand-dunes,¹ consolidation of runrig and division of commonty. On the whole, these Acts were passed to strengthen the concept of private property rather than simply to produce agricultural improvement. Whatever the intent, the landowner was given a body of legislation which simplified his task of consolidation when the Agricultural Revolution made itself felt in the latter half of the eighteenth century. 'In no country in Europe are the rights of proprietors so well defined and so carefully protected', wrote Sir John Sinclair in 1814.² Co-ownership of land precluded improvement, because the fruits of labour could only be guaranteed under a system of sole ownership.

The simplicity of the Act has already been remarked upon. It was passed to 'prevent discords about commonties' and 'for the more easie and expedit dividing thereof'. The aim was solely to get the commonties divided, except those belonging to the Crown and royal burghs. The former's lands had to be protected, but the latter had already discovered an even more 'expedit' method of

1. APS. 1695, c. 54

2. Sinclair, Sir John, General Report of the agricultural state and political circumstances of Scotland, Edinburgh, 1814, 115

disposal.¹ The Court of Session in Edinburgh was the central body delegated to supervise the division. A single party with interests in the commonalty could raise a process of division. Thus, within a century, the required level of agreement to divide a commonalty had passed from all to majority and finally to a single interested party. The method of division, based on the valued rent of the lands having interest in the commonalty, was also prescribed. The supervision of the division was to be in the hands of local people and the commissioner in charge was to be someone of high standing in the locality, usually a sheriff-depute. Mosses within the commonalty were given detailed treatment; if they could not be divided equitably, then they were left common with 'free ish and entry thereto'. Finally, the Act declared that the allotments should be such that each fell 'next adjacent to each heritor's property'.

The Act marks the tidying up of various procedures for dividing Scotland's commons, rather than an innovation. Its simplicity was its strength. First, the procedure relied on a single statute couched in terms understandable to the layman, so that potential litigants were not put off by unintelligible legal jargon. Secondly, it relied on the judgement of the Court of Session in Edinburgh, which gave centralised direction and relatively consistent decisions. At the same time, this central control did not sink the procedure of division in a mire of bureaucracy, for the Court delegated the empirical tasks of establishing rights to the commonalty, its bounds and scheme of division, to a local

1. See below, Chapter V

commissioner, or commissioners. In turn, the commissioner appointed his clerk, valuator and surveyor. Invariably these were all local men who were respected in the neighbourhood. A wide spectrum of people was thus active in the transformation of their own landscape. All this differed considerably from the situation in contemporary England, which required a separate Act of Parliament to enclose each common. The Scottish system allowed for quick and cheap division. In short, the completeness of the enclosure of Scotland's commons could only have been achieved with the aid of some such liberal legislation as is represented in the Act 1695, c.96., Dornock (1765), Gretna (1765), Kirkpatrick (1765), Broochill (1765), Sarryside Moor (1765) and Kirkpatrick-

The procedure of division

In a division of commonty process a standard procedure was followed. It opened with the pursuer, or pursuers, raising a summons in which he declared the documentary evidence for his claim to a share in the commonty, and called upon the defenders to do the same. Once the pursuer had established a prima facie case for the division of a commonty, even though the defenders wished it to remain undivided, an interlocutor was granted by the Court of Session appointing a commissioner and giving him powers to appoint his clerk, valuator and surveyors. The former was usually a local writer who took care of the everyday running of the commission from finding a suitable venue to taking down the witnesses' depositions.

The commissioner's role was vital in a division of commonty process, for he alone of the Court went and examined the commonty. Usually the sheriff-substitute or depute of a county was appointed, but less frequently such figures as the provost of Annan or a

professor of agriculture at the University of Edinburgh provided their services.¹ The former, Bryce Blair, provost of Annan, was appointed to a number of cases in Dumfriesshire between 1745 and 1758. In one process he held the position jointly with John Goldie, sheriff-substitute of Dumfries who was referred to as 'a person of great knowledge and experience in the executing of commissions of this nature'.² Goldie gained his experience in a number of cases spread over many years: Upper Dryfesdale (1737), Hightae (1741), Bakerland (1750), Rutherford (1750), Tundergarth (1750), Creca (1755), Topmuir and Edge (1757), Pilmuir (1760), Brownmoor (1763), Dornock (1765), Gretna (1765), Kirkpatrick (1765), Broomhill (1765), Sorryside Moor (1768) and Kirkpatrick-Juxta (1733). That officials in charge of a division were chosen for their personal qualities is further illustrated in the commonty of Eskdalerig, when the Lord Ordinary suggested 'Robert Dalrymple of Priestside, Writer to the Signet, as a very proper person for being the commissioner and James Tait, mathematician in Lockerbie, as a skillful person to survey the ground and to draw a plan or map thereof and of several divisions to be made of the same'.³

The commissioner and his clerk took all the evidence at a convenient place near to the commonty, usually the local inn.

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1. Dr Andrew Coventry, professor of agriculture in the University of Edinburgh, was appointed commissioner for the division of the commonty of Turnhouse Hill, 1805, and the division of the runrigs of Renton, 1809
 2. SRO. Douglas v. Stormont (EP. Dal. C. & E. (Da. Marshall) 11/8/1758. A-H/1)
 3. SRO. Douglas v. Irving (EP. Dal. C. & E. (Da. Marshall) A-H/1 25/6/1760)

JOHN HACKNEY, Vintner,

WESTHAVEN.

	L.	S.	D.
ENTERTAINMENT	"	12	"
To Bottles Claret	"	8	"
To 8 Bottles Port	1	8	"
To 1 Bottles Sherry	"	3	6
To Bottles Old Hock			
To Bottles Madeira			
To Bottles Fronteniac			
To Bottles Mountain			
To Bottles Malaga			
To Bottles Burgundy			
To Bottles Cyder			
To Punch			
To Negus			
To Tea			
To Coffee			
To Bottles Porter	"	"	8
To Bottles Ale	"	"	3
To Drams Cordials			
To Drams Brandy	"	1	4
To Drams Geneva			
To Drams Rum			
Brockage			
Servants { Eating and			
{ Drink			
Horses { Hay and		3	6
{ Corn			

~~2~~ 2 | 9 | 3 |

1 - 2 - 5 1/2

10 - 11

2 12 7 1/2

5 May

This venue did not have the forbidding dignity of a court room and, from documentary evidence, it appears that the commissioner may have been in cheerful spirits (Plate 22). All parties claiming rights to the common had to produce before the commissioner, documentary evidence in the form of sasines, charters or deeds. After this was completed, proof of possession, or customary usage, was heard. Men and women, who in their youth had herded on the commonty, were questioned by the commissioner as to their duties some forty years earlier when they were usually only eight or nine years old. This evidence is of unique value for it records directly from the mouth of the tenant farmer, often illiterate, the valuable role of the commonty in the life of the township. Activity of this nature rarely attracted attention of the literate observer before the end of the eighteenth century, by which time the traditional use of the commonty had been discredited to a large extent.¹

Once the rights to the commonty had been established, the commissioner had to supervise the 'perambulation of the marches', that is, taking proof of the extent and boundaries of the commonty. Again, the memory of the older farm hands was used to establish

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1. Most of the references to commonties in the Old Statistical Account and Views of Agriculture emphasise their inefficiency and the commonty's role in sustaining subsistence agriculture is often deplored.
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Plate 22. Receipt submitted by commissioner for his expenses incurred whilst taking proof during the division of the commonty of the Links of Barry, Angus, 1801 (Scottish Record Office, Gardyne v. Hunter EP. Dur. 6/3/1801)

these limits. It was at this point that most disputes arose: commonities had been encroached upon throughout the eighteenth century, but it was the rapidly rising value of land, due to the introduction of commercial farming, which led neighbours to keep a watchful eye on the shrinking bounds of the commonity. If the encroachment had been undertaken more than forty years before the case then that land was deemed no longer commonity. However, if it had been taken in within that period, then it remained part of the commonity. At times, to save expense when making a plan of the commonity, only the disputed part was surveyed (Plate 23).

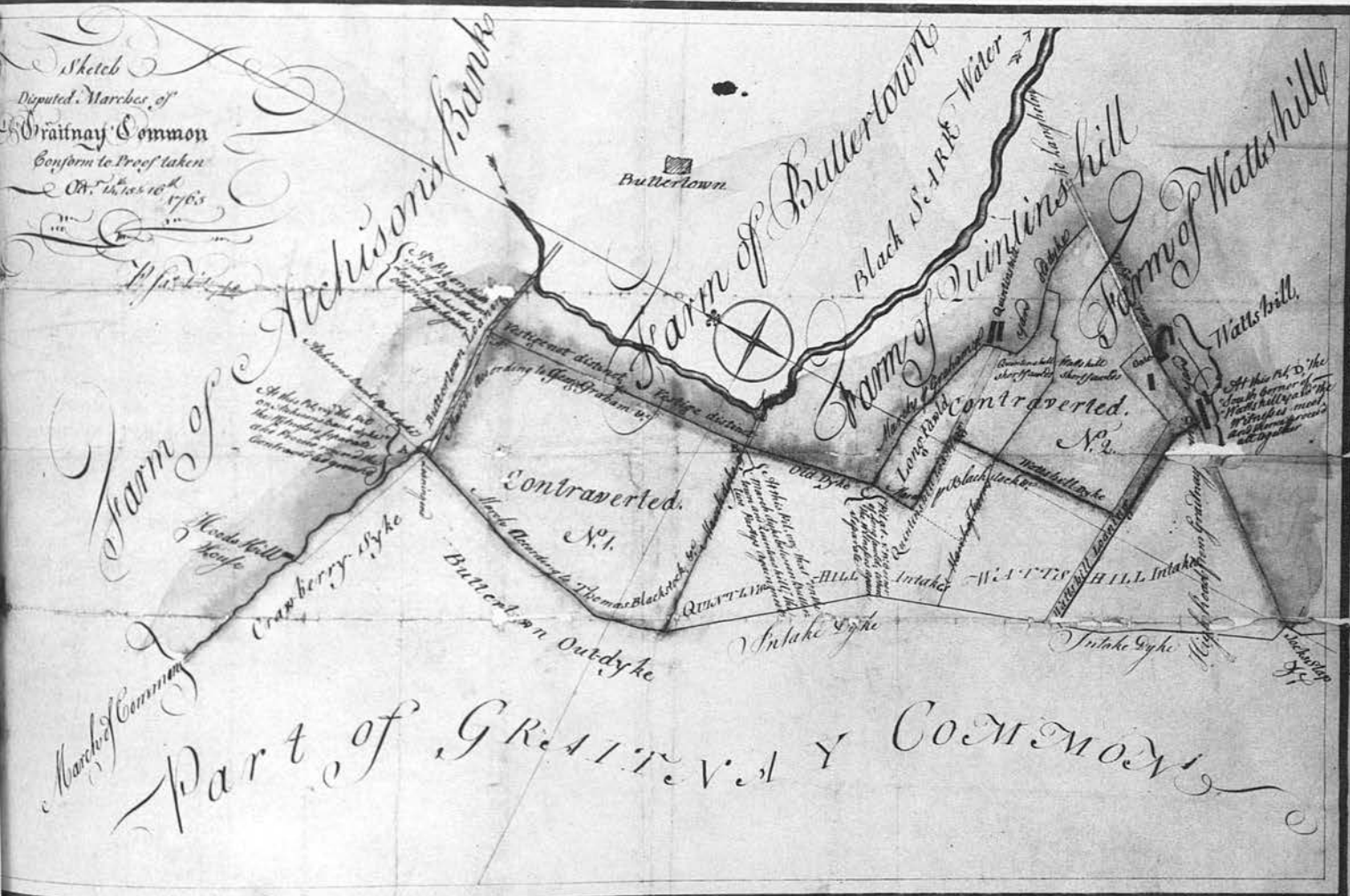


Plate 23. The disputed areas on the northern boundary of the commonity of Gretna in a plan by James Tait, 1768 (RHP. 3903)

A surveyor and three or four valuator were then appointed, the latter usually being local tenant farmers of good standing, who together went to the common to judge the different qualities of land (Plate 24). They divided it into parcels which were priced in pence or shillings per acre (Plate 25), and seemed to have shrewd eyes for rarely, if ever, were they challenged. On the other hand, in several cases the surveyor gave rise to great controversy as a result of his surveying, drawing or delimiting a scheme of division of the common. 'The objections resolved into a charge of gross partiality against the surveyor [James Tait].'¹ Even if the surveyor avoided such accusations and accomplished his tasks to everyone's satisfaction, he could still send in a bill that was sure to raise the ire of all parties.

NOTICE is hereby given, that the Commissioners appointed to divide the LANDS of INVERESK, are to meet at the House of Mrs. Laing Vintner in Musselburgh, upon Monday the 8th of September, at 10 o'clock Forenoon, in order to visit the Lands, and name Measurers.

Plate 24. Advertisement by commissioners appointed to divide the Haughs of Inveresk, Midlothian, for the appointment of a land surveyor (Edinburgh Evening Courant, Tuesday 2 Sept. 1755)

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1. Division of the common of Hightae, Lochmaben, Dumfriesshire. Memorial, dated 1766, for Charles, Duke of Queensberry, p. 3
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Plate 25. Common of Hassendean, Roxburghshire, as divided by the valuator, 1762 (RHP. 180/2)

When William Bell, land surveyor in Edinburgh, presented an account for £82 3s 6d on completion of surveying the runrigs of Bardmony in 1791, he had to resort to the Court of Session to secure payment.¹ Unfortunately for him, the lands had been surveyed only the year before, in 1789, by Andrew Thom, land surveyor in Rattray, who had charged only £17 8s for exactly the same survey. Bell mustered some very powerful supporters of his claim. Both John Ainslie and John Home found the account to be 'not only reasonable but rather moderate' and Ainslie added that if he had been employed to do the same survey his account would have been considerably larger.

With the valuation and delimitation of the commonty completed, a scheme of division was produced, based on the valued rent of the lands with rights to the commonty. The commonty was divided not only in proportion to the valued rent, but also with regard to the quality of the ground. Each party had to take the ground nearest his property. As a result the areas could vary, but the total value of the commonty received would be equal to the proportion due. If there were any mosses within the common which could not be conveniently divided, then they had to be left common with free access to them. If the scheme of division was agreed, then the surveyor returned to the commonty to set up marks, pits, or cairns, on the boundaries of the shares.

At this point the evidence was summed up in a state of process, which was submitted to the Court for its judgement. If the findings were upheld, and not challenged by dissatisfied parties,

1. Representation for William Bell (UP. 1 Adams Mack. B/5/85)

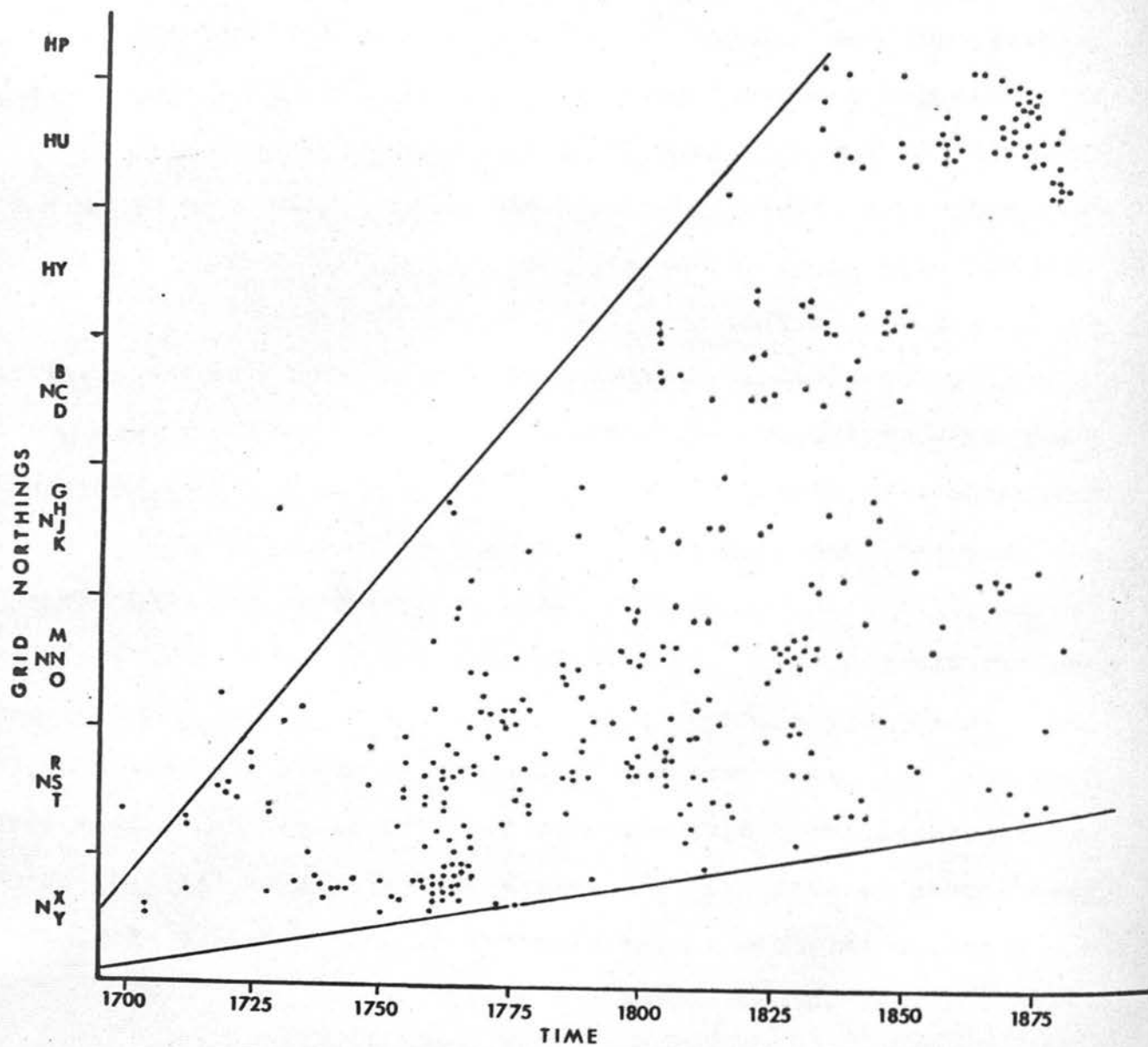


Fig. 11. Diffusion of division of county northwards from 1695 to 1900. Each dot represents one summons.

a final decret was issued. Once the decret was registered, the portions of the former commonty became the sole property of those to whom they had been allocated. In order to prevent any possible dispute, a copy of the plan of the division was lodged in the local sheriff court. However, disputes were rare once the case had been completed and the lands seem to have been rapidly integrated into the adjacent estates.

Progress of division in the eighteenth century

The passing of the Act in 1695 did not result in a flood of new divisions; in fact, only sixteen cases have been discovered in the first thirty-five years of the eighteenth century (Fig. 11). The indistinct pattern of commonties being divided over a wide area of lowland Scotland which appears at this period is only a continuation of the pre-1695 distribution (Fig. 8). Both the continuity of agricultural methods and economic stagnation account for this situation. The seasons after August 1696 were marred by blight and famine which continued for two years in Aberdeenshire and four years in Ayrshire. 'The final harvest failure of 1699 must have found a population which had exhausted its resources, both physical and material.'¹ Mitchison concludes that this was the last Scottish famine and the death-rate of this period may well have wiped out any rise in population which had taken place in the previous period of security. If the population had

1. Mitchison, R., 'The Movements of Scottish Corn Prices in the Seventeenth and Eighteenth Centuries', Economic History Review 2nd ser. XVIII (1965), 278-91

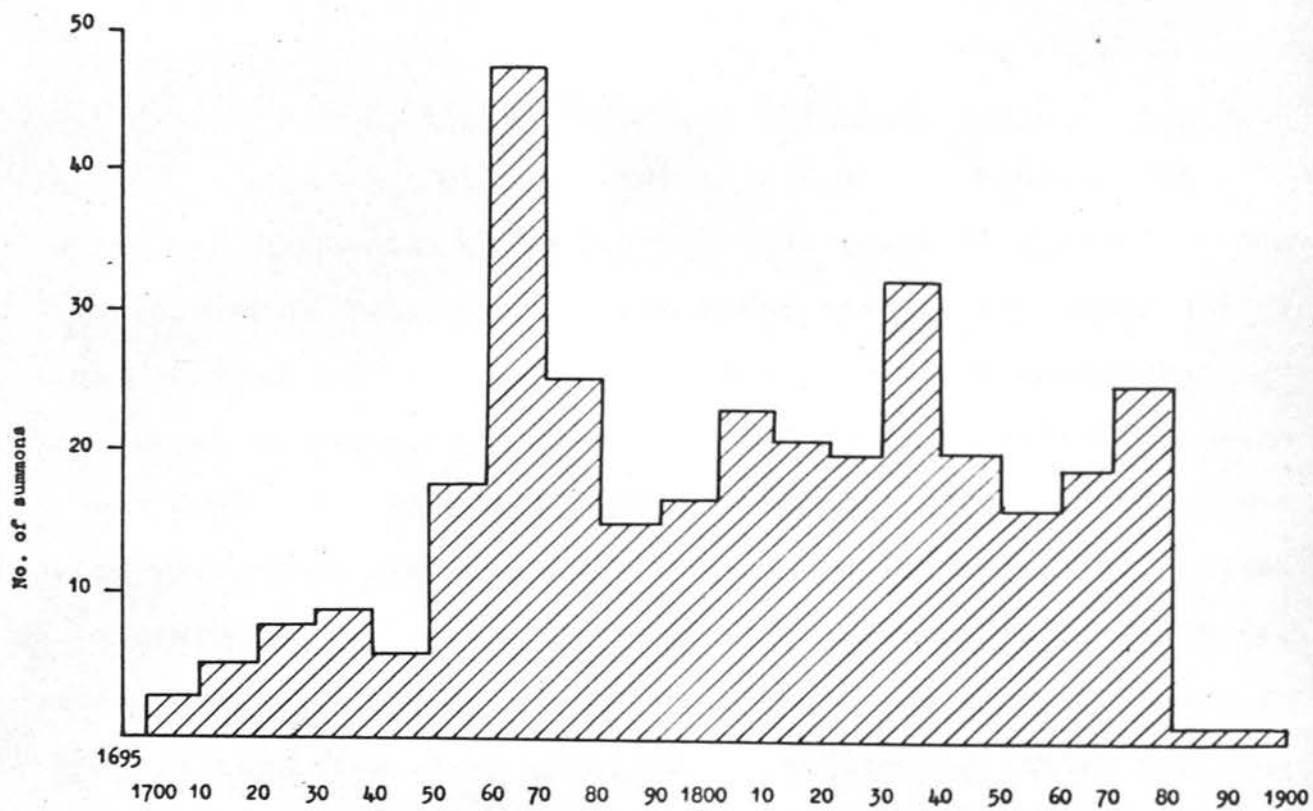


Fig. 12. Rate of raising summonses for division of commonalty 1695-1900

continued to expand, especially in the Lowlands, greater pressure would have led to colonisation of the commonties by peasant farmers. As it was, large tracts of the country formerly under cultivation reverted to waste and pressure on land was temporarily reduced. It was in this situation of decline that the commonties remained virtually unmolested.

Years of dearth returned again in 1709, 1740 and 1760, but famine in the strict sense never returned to Scotland as a whole. It is easy to blame the inclement weather, but as England escaped the famine, the backwardness of Scottish agriculture must shoulder some of the blame. Whether these years of stagnation in the Scottish agricultural economy had any direct effect on the division of commonties is an open question, but it is evident from Figure 12 that a remarkable jump in the raising of summonses in the period 1750-80 accords closely with Handley's date of 1770 marking the initiation of the full flood of the agricultural revolution in Scotland.¹ Hamilton has suggested that it was because the Scots nobility saw the largely enclosed English landscape with its relatively advanced agricultural methods that ideas of agricultural change were stimulated in Scotland.² The transfer of Scotland's political centre of gravity to London after the Union gave the politician, who was also a landowner, a wider insight into the relatively advanced state of English agriculture. Yet the Scottish landowner was not entirely parochial prior to the

1. Handley, J.E., The Agricultural Revolution in Scotland, Glasgow, 1963

2. Hamilton, H., An Economic History of Scotland in the Eighteenth Century, Oxford, 1963, 56

Union: the Duke of Montrose made a leisurely journey through England in 1698 and the more prosperous rural landscape did not go altogether unnoticed.¹ Another weakness in this theory is the long time lapse between the Union in 1707 until the main period of agricultural improvement in the 1770s. What may have held Scotland back was not the will but a lack of capital. Even a simple division of common land, such as the division of Hassendean Common, could cost the landowner 5s 8d per acre. In addition his allocation of land had to be fenced, drained, limed and a season had to pass before any immediate return could be expected. In 1766 Peter May, a land surveyor in Aberdeen, estimated that even turf dykes cost 3½d per ell (3.1 ft).² For example, a square enclosure of 50 acres required 2160 ells of dyke costing £31 10s. When the allocations in some cases of division of common land ran into hundreds and even thousands of acres, the expense could be considerable.

The divisions, then, in these first thirty-five years of the century, were scattered and without any great unifying force. Stimuli varied: at Muiravonside in Stirlingshire, it appears that easily accessible coal beneath the common land provided the needed stimulus for an action of division to be initiated.³ After this period of virtual stagnation summonses were raised more frequently. No longer was there a dispersed distribution of divisions. In

1. SRO. Montrose muniments (GD.220)

2. SRO. Forfeited Estates Papers (E.787/12/3)

3. SRO. Division of Muiravonside (Ep. Mack. C. & E. (Wm Grant)
R/VIII 1/1/1697)

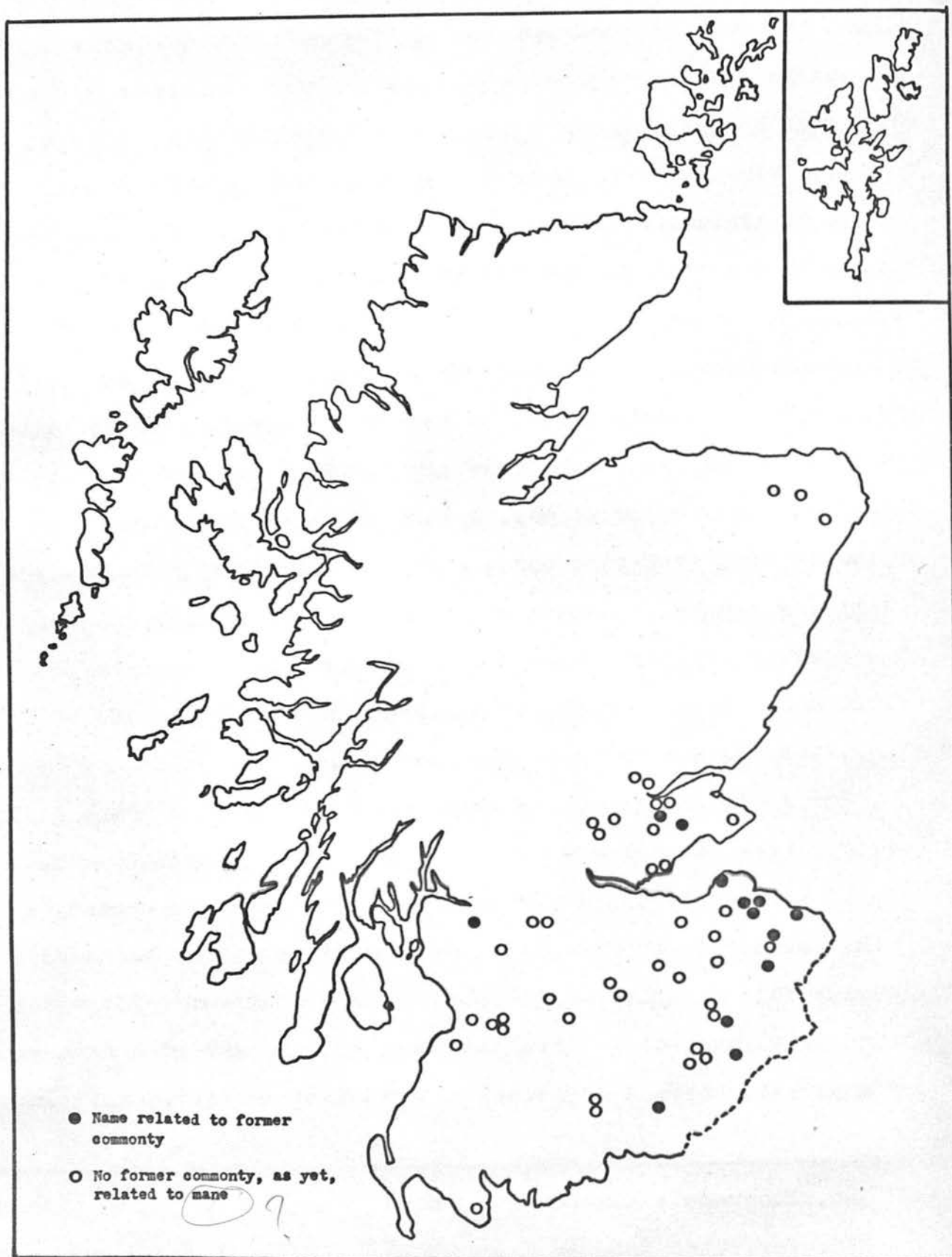


Fig. 12a. Distribution of place-names containing the element 'common' appearing on present-day Ordnance Survey One-Inch maps (Source Place-name Survey, School of Scottish Studies, University of Edinburgh)

compact areas this archaic form of land ownership was suddenly swept away, and within a few years all that remained were relic place-names. (Fig. 12a)

In Dumfriesshire, summonses began to be raised in 1730 and over the following forty years sixty-two commonties were divided. The peak was completely over by the conventional date of the arrival of the agricultural revolution in Scotland in 1770 (Fig. 11). However, this indicates that division of commonry is a prerequisite of agricultural improvement. The minister of Cummertrees parish wrote in 1793 that the real rent of the parish had risen from £500 sterling to £2800 sterling since 1733 and, using his own words, 'this great advance is only to be ascribed to the discovery and use of lime and the division of the commons'.¹ Away from Dumfriesshire the bulk of the divisions did not take place until after 1770. In Angus, for example, the movement only gained momentum in 1800 and in Caithness in 1815 (Fig. 13).

It would be convenient to propose a simple diffusion originating on the Anglo-Scottish border, as it appears in Figure 13, but, as Figure 14 illustrates, the situation was far more complex. Thus, the apparently clear-cut pattern of diffusion - Dumfries, Angus, Caithness and Shetland does not stand up to comparison with four other counties - Midlothian, Perth, Aberdeen and Ross and Cromarty. Yet this dichotomy may be explained if the homogeneity of various regions is taken into consideration. In Dumfriesshire, Angus, Caithness and Shetland the divisions were closely related in time because the same factors of population

1. OSA. vii, 3

Fig. 13. Regional variations of division - Dumfries, Angus, Caithness and Zetland. Each dot represents a summons of division of commonry

In summary, the following factors were closely related in time because the same factors of population

pressure, agricultural improvement, and landownership were working on the same kind of regions within the counties. In Dumfriesshire all the commonities were located within fertile river valleys, the bulk in fact in the Annan valley, and there were few commonities on the encircling uplands. On the other hand, in Midlothian, Perth, Aberdeen, and Ross and Cromarty the commonities lay in much more varied environments. For example, Midlothian ranges from fertile, densely populated areas around the capital to barren moorland in its hinterland in the Southern Uplands. Again, Perthshire ranges from the fertile carselands of the Rivers Tay and Earn to the desolation of the Moor of Rannoch.

Commonities were not divided throughout Scotland in a random manner (Fig. 11); there was a general trend for the counties in the southern half of the country, below a line drawn from the Firths of Forth and Clyde, to divide well before the more northerly counties. If one looks at three widely separated counties - Dumfriesshire, Angus and Caithness - it can be seen that, on the regional scale, divisions were closely related in time (Fig. 13). On the other hand, the impetus to divide came at widely separate periods of time - 1730 to 1760 in Dumfries, 1800 to 1830 in Angus, and 1815 to 1850 in Caithness. This pattern of diffusion would have been easily explained if the ownership of land had been in the hands of a few families, as was the case in Sutherland.¹ However, Caithness had many small proprietors with a multiplicity of interests in the many commonities in the county.² These men

1. See Directory, 238

2. Mitchison, R., Agricultural Sir John, London, 1962, 4

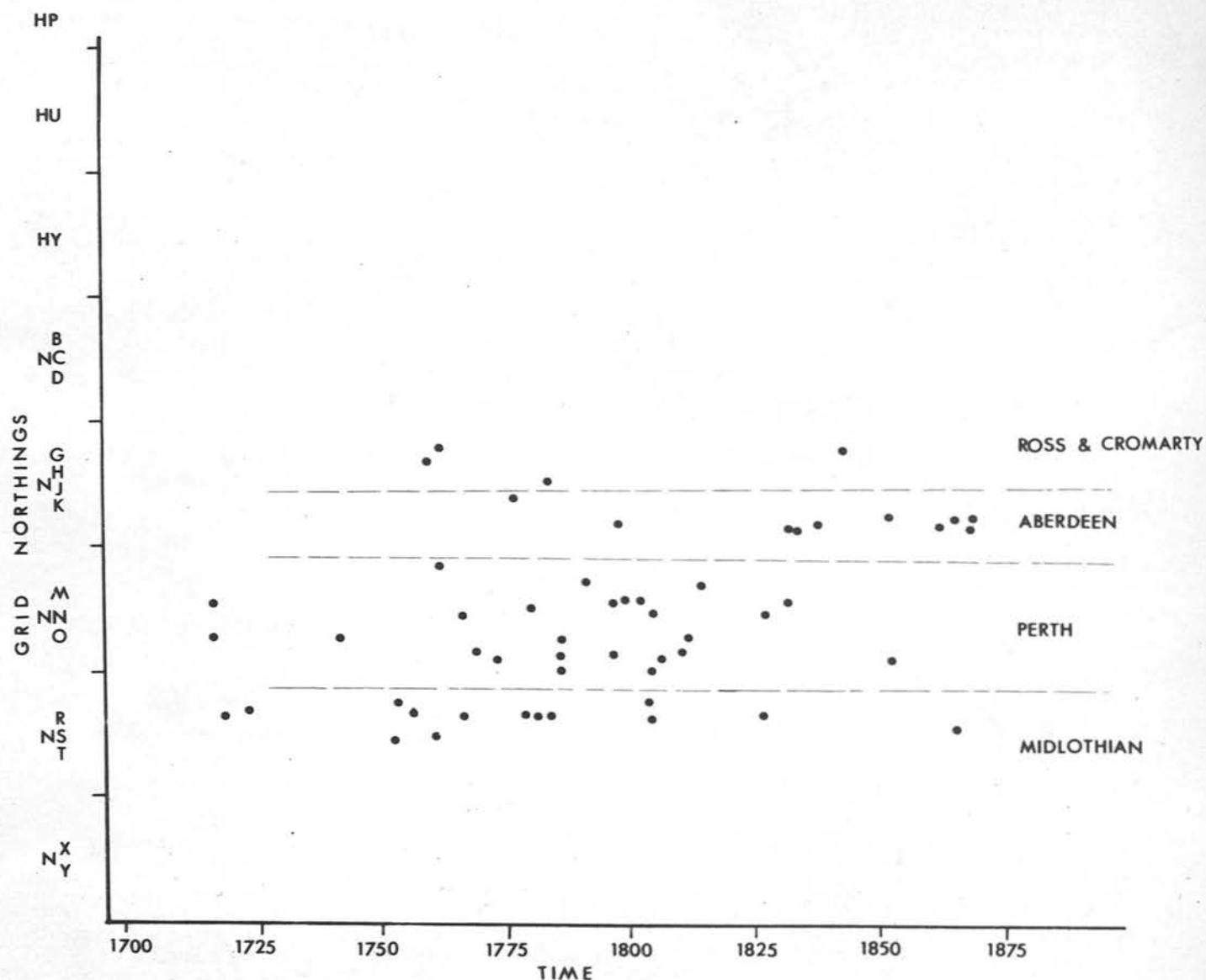


Fig. 14. Regional variations of division - Midlothian, Perth, Aberdeen and Roass and Cromarty.
Each dot represents a summons of division of commonalty.

were by no means backward or ill-informed: any county that could produce a man of Sir John Sinclair's calibre and breadth of vision undoubtedly knew what was going on in the rest of the country.

This progress of division of commonry northwards does not have any parallel on an east-west axis. However, no claim is being made for a simple diffusion on a north-south axis and none on the west-east axis, for the distribution pattern is conditioned by the areas favourable to settlement in Scotland. These areas happen to be located in a relatively narrow strip along the eastern coasts with the broad parallelogram of the Central Lowlands and the lowlands of Dumfriesshire consisting of the Rivers Nith and Annan. If one looks at the progress of division in three other counties - Midlothian, Perthshire and Aberdeenshire - then a much more confused pattern emerges (Fig. 14). No longer is there a simple diffusion northwards, but a series of divisions taking place in all three counties over a wide period. The commonries located in Midlothian present a real problem, for the spread of division ranges from 1695 to 1870, as well as some divisions prior to these dates.¹ If one recognises that two forces were working, the desire first to create sole rights to property, and secondly to initiate agricultural improvements, then the seeds of the movement for division of commonry may be seen in this rather complex picture.

1. Commonries of Penicuik and Halls were divided in 1689 and 1695 respectively, and on the other end of the scale the commonry of Broadbent was divided in 1870.

At first the divisions were confined to the Central Lowlands, many in the areas of high population density. This situation lasted from the medieval period right up to the Union in 1707 and beyond. The stimulus throughout this period was solely to create rights of private property. At this point in time, in the 1720s and 30s, certain Scottish landowners - Grant of Monymusk, Fletcher of Saltoun, Cockburn of Ormiston, the Earl of Stair - began to introduce into the Scottish agricultural scene some of the improvements emanating from England.¹ This, and the increasing prosperity of Scotland which started to make itself felt in the third decade of the century, provided a stimulus for reorganisation of the landscape including the half million acres of commonty.

The role of the landowner was extremely important in the movement for the division of commonties, since it was his duty to initiate the legal action in the Court of Session as the pursuer, or else actively to protect his interests as the defender. In many counties the same people were involved in case after case. George, Marquis of Annandale, participated in twenty-five cases of division of commonty, four as pursuer and twenty-one as defender, involving over 19,984 acres.

The fact that George, Marquis of Annandale, was the pursuer in so few cases may give the impression that the large landowner was not active in the movement for division of commonties. However, the evidence points precisely in the opposite direction, for the same names - Annandale, Queensberry, Zetland, Sinclair, etc. - appear with regularity. What is remarkable is that they appear more in the lists of defenders than as pursuers. Out of twenty-five processes, the Marquis of Annandale was the pursuer

in only four. Again, Charles, Duke of Queensberry, pursued only four of the twelve cases in which he participated.

Divisions of commonities
involving George, Marquis of Annandale

<u>Date</u>	<u>Name of commonity</u>	<u>Imp. acres</u>
1730	Hoddum and Ecclefechan	2,000
1736	Upper Kirkpatrick-Juxta	800
1737	Upper Dryfesdale	1,443
1743	Middlebie	1,099
1745	Holes of Gate	?
1750	Dornock	1,137
1753	Cummertrees	?
1754	Creca (P)	862
1758	Upper Kirkpatrick-Juxta (P)	938
1760	Pilmuir	2,487
1762	Sibbaldbie	955
1762	Hutton	595
1764	Gretna	489
1764	Annan	2,400
1765	Broomhill Muir	140
1765	Moffat (P)	1,280
1765	Redhall (P)	945
1765	Kirkpatrick	1,091
1766	Wamphray Muir	205
1766	Dundoran	358
1766	Blaze	314
1766	Middlerig	134
1767	Cammock Bog	179
1768	Corrie	?
1791	Torwood	133
Total		<u>19,984</u>

(P) = pursuer

Although in some circumstances it may have been the strong personality of the local proprietor which led to the rapid division of the commonties in a locality, there is evidence to show that estate management, including division of commonty, could function without any lead from the proprietor himself. All but three of the commonties in the above table were divided whilst the Marquis of Annandale was suffering from a mental illness, precluding him from any part of the legal action.¹

In several actions there is evidence to show the pursuer was the injured party and that his recourse to law was made simply to rescue his rightful share of the commonty before it was illegally enclosed by more powerful neighbours. The division of Sibbaldbie Commonty in Dumfriesshire illustrates this point precisely.² Edward Buncle of Heuck raised the summons of division of commonty against George, Marquis of Annandale, Sir Alexander Jardine of Applegarth, Thomas Thomson of Balgray, Robert Henderson of Cleugh-heads, John Johnstone of Grange and George Graham of Shaw. In it he stated that he and his tenants were 'daily troubled and molested in the peaceable possession of the commonty by the defenders, their tenants or others in their name pasturing their cattle, casting peats and turfs, breaking over the bounds and marches of the commonty and making intakes and inclosures thinking in the process of time to appropriate the commonty themselves'.

1. Paul, Sir J.B. (ed.), The Scots Peerage, Edinburgh, 1904, i, 269

2. Buncle v. Annandale (EP. Mack. 11/8/1774)

This rather desperate talk by the pursuer is by no means untypical, for it is found again in the process for the division of the commonty of Hannah, Cummertrees parish, Dumfriesshire.¹ Caution has to be applied in interpreting such language, for it is probably 'common form' (i.e., the normal legal overstatement), since each side always pitches its own claims high and denigrates the opposition. The original size of the commonty of Hannah is

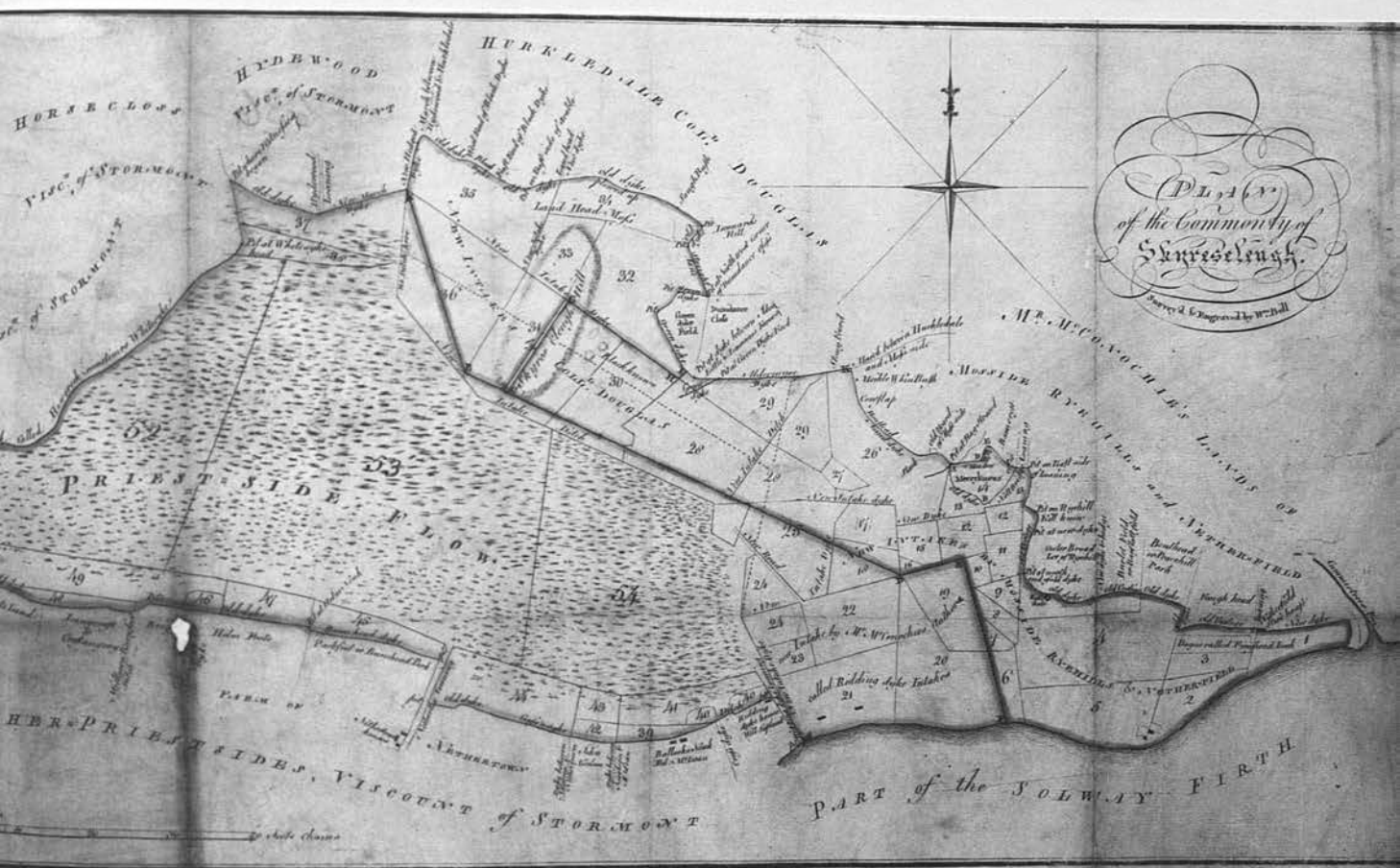


Plate 26. Commonty of Skyrescleugh, Cummertrees parish, Dumfries, showing the large area of ground taken in from the commonty, 1781 (RHP. 636)

1. SRO. Smith y. Douglas (UP. Currie Mack. S/4/2)

not known, but by 1772 it had been so encroached upon that the minister, Thomas Smith, procured an interdict against further illegal enclosure by Colonel Stewart Douglas. Yet within a year Douglas had appropriated all that remained of the common, except for a drove road that passed through it. In sheer desperation the pursuer took out a summons of division of common to salvage what he could of the last remaining hundred acres.

It must not be assumed that the pursuer was the largest landowner involved in the action: often the reverse is true. For example, when the common of Sibbaldie was divided, the pursuer received only 94 acres as compared to the principal defender's 630 acres. The extent to which encroachments (usually called intakes) could reduce the area of a common varied a great deal, but at times quite considerable areas were involved. The common of Skyrescleugh, Cummertrees parish, Dumfriesshire, had lost 463 acres out of 833 by the time it was divided in 1783 (Plate 26).¹ The 370 acres that had not been appropriated remained only because it was flow moss and unusable, a condition which pertains to the present day.

Progress of division in the nineteenth century

By the end of the eighteenth century the agrarian revolution, sponsored by the Society of Improvers and by progressive landlords, had spread over most of Scotland, bringing rotation of crops, enclosures, leases, afforestation, drainage, new implements and new products. As fast as these innovations were introduced

1. SRO. Stormont v. Douglas (EP. Dur. 24/1/1784)

commonities disappeared. The only exception to the general movement was to be found in the northern counties - Caithness, Orkney and Shetland. A series of special circumstances gave these counties a disproportionately high percentage of Scotland's common lands. Until 1468 Shetland was under Norse rule and the system of land tenure, derived from Norway, was based on Udal Law.¹ This was based on a system of land tax, called Scat, which entitled the proprietors of the townships (rooms in Shetland) to have rights upon common lands, called scattalds. Outwith the small arable patches of the rooms all the land was virtually common. Even when the system of land tenure changed after the transfer of ownership to feudal Scotland, the rights to the scattald survived right down to the beginning of the nineteenth century. The 1695 Act for division of commonity covered scattalds in the same manner as mainland commonities. No explanation as to the late division of Shetland's scattalds has been forthcoming, but a detailed study of these lands should bring forth interesting results.

The late division of some of Caithness and Orkney's commonities, on the other hand, is easy to account for: many commonities in these two counties, having once belonged to the bishopric of Orkney, had fallen into the hands of the crown and, in consequence, were exempt from the Act of 1695. By 1828 the situation was becoming critical, as far as the crown was concerned, as wholesale encroachments were being made, including parts being feued by the

1. Dickinson, W. Croft, 'Odal Rights and Feudal Wrongs', The Viking Congress, ed. W. Douglas Simpson, Edinburgh, 1954, 142-60

magistrates of Kirkwall.¹ The Remembrancer, the crown's officer in Orkney, submitted a report listing the encroachments and requesting 'that an Act of Parliament ought to be applied for, for having those commons divided, and I beg to lay before Your Lordships the Draft of a Bill for that purpose'.² A sense of urgency was injected into this plea to get a quick passage for the Bill by the Remembrancer's reminder that 'certain of the persons proper to be adduced as witnesses for establishing the encroachments made upon the commons, are aged, and there is a very great risk of the benefit of their evidence being lost if the measure is longer postponed'. The government did not delay and in the following year passed an Act entitled 'An Act for authorising a division of certain commons in the county of Caithness, and stewarty of Orkney, in which His Majesty has an interest'.³ Its main provision laid down

'that it shall and may be lawful for His Majesty's Advocate in Scotland, now and for the time being, to direct summonses to be raised in his name, against all persons concerned, before the Lords of Council and Session, for having the commons in the county of Caithness, and the stewarty of Orkney, in which His Majesty has any right or interest, divided according to the manner and way prescribed in an Act of the Parliament of Scotland, passed in the 1st year of the reign of King William, on the 17th day of July 1695, entitled, "An Act concerning the division of commonties".'

1. Report of the Remembrancer concerning the crown lands in the bishopric of Orkney, 24th November 1828 (SRO. CR.4/196)

2. Ibid. See, J., *The Law of Land-ownership in Scotland*, Edinburgh,

3. Act 10 Geo. IV cap. 132 (local and personal)

4. Act of the Court of Session, Edinburgh, 18 June 1852

Inconvenienced by law, the crown found itself in an anomalous position which it rectified by amending the law to suit its own purpose. The new Act reserved the royal prerogative in that only the crown's legal representative could pursue the division, but it made use of the long-established method of division. The Lord Advocate was not long in using his new powers: commonties were divided in rapid succession in Orkney and Caithness - Hill of Forss (1830), Holm (1831), Shapinsay (1831), Reay (1839), Sandwick (1845) and Kirkwall and St Ola (1845). The crown worked to a plan for the progressive division of the commons.¹

In the second half of the eighteenth century the legal procedures of division of commonty had fallen into a somewhat confused state.² To overcome this confusion the process of division of commonty was regulated by an Act of Sederunt passed in 1852.³

I. The summons in the process of division of commonty shall be prepared in terms of the 1st section of the statute 13 and 14 Vict. cap. 36

II. The condescendence framed in terms of such section shall set forth, in reference to a plan or sketch to be produced along with the summons, the description of the boundaries of the common which the pursuer proposes to have divided, according to natural or other objects, or the names, if any, of

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1. Report of the Remembrancer on the subject of the division of runrig lands and commons in the county of Orkney. 3 December 1829. (SRO. CR. 4/199)
 2. Rankine, J., The Law of Land-ownership in Scotland, Edinburgh, 1884, 501
 3. Act Sederunt of the Court of Session, Edinburgh, 18 June 1852

hills, mosses, and other localities, occurring along or near to the line of such boundaries.

III. The pursuer shall, in said condescendence, state the nature and extent of the right and interest he claims in such common, the titles under which he maintains that such interest belongs to him, and the claim he proposes to advance in such process of division, which claim may be subject to any alterations which the evidence and pleas of parties render necessary.

IV. The parties who intend to appear in the process shall lodge defences in terms of the said statute, stating the nature and extent of the right and interest they mean to advance in the said common, whether in the whole or in a portion thereof, the extent and boundaries of the common, if they do not admit the boundaries stated by the pursuer, the lands, if any, within the pursuer's boundaries, which they claim as private property, and as not forming part of the common, the title under which they maintain such pleas, and the like, and the claim they intend to advance in the process, subject to any alterations which the evidence and pleas of other parties may render necessary.

V. After such papers are lodged, the Lord Ordinary shall consider the same, both in reference to the requirements of the said statute, and also in order to consider whether any questions of law ought to be determined before allowing proof, or to what points of proof should in the first instance be directed; and also with a view to consider whether such proof should, in whole or in part, be by commission or before a jury, or in what other form; and should be so tried before the general boundaries of the common are to be remitted to proof, and between what parties.

Much of the paperwork was thus left out: prepared states, memorials, and abstracts were dispensed with by the Court without the consent of all parties. Plans were required from the very beginning of the process. This was not such an imposition as it

might appear, as large-scale surveying of Scotland had begun by the Ordnance Survey in the 1840s. It meant that the pursuer had simply to purchase an Ordnance Survey map and fill in the common's boundary.¹ Finally, the method of hearing proof was considerably widened, even as far as taking it before a jury. What it meant, in fact, was that in future control from the centre would be much firmer.

As most of Scotland's common lands had been divided by the date of the Act of Sederunt, with the exception of Shetland's scattalds, it did not have any real impact on the speed or ease of division of commonry. In Shetland scattalds were being divided apace with tens of thousands of acres of scattald land being allocated to private individuals (Plates 6, 14).

By 1877 there were so few commonries left that it was felt that the Court of Session could be relieved of the task of hearing division of commonry processes, the hearing of which was transferred to the jurisdiction of the Sheriff Courts.²

8. The jurisdictions, powers, and authorities of the sheriffs and sheriffs substitute of Scotland shall be extended to:-

(3) Actions of division of commonry, and division, or division and sale, of common property, where the value of the subject in dispute does not exceed the sum of fifty pounds by the year, or one thousand pounds value:

Provided that the Act of the Parliament of Scotland passed in the year 1695, intituled 'Act concerning the dividing of commonries', shall for the purposes of this Act, and subject to the limitations hereof, be read and construed

1. E.g. RHP. 4147

2. 40 & 41 Vict. cap. 50, sect. 8(3)

landowners as if it conferred jurisdiction upon sheriffs and sheriffs substitute in the same manner as it confers jurisdiction on the Court of Session.

It went on to state that the action must be held in the county in which the commonalty was situated. This is a strong indication that the few remaining commonalties to be divided were situated in the remote counties of Scotland. The position of Sheriff Court records is at present in a state of flux. Some have been deposited in Register House, Edinburgh; others are housed in the local Sheriff Courts. Even those in the central archives have not been indexed sufficiently to isolate division of commonalty processes. The report of the Committee on Sheriff Court Records, published in March 1967, recommends that these records be put in the charge of the Scottish Record Office, Edinburgh.¹ Only a single case has so far been found that has been resolved in a Sheriff Court.² There appears to be little chance of a division of commonalty case ever again being heard in a Scottish court, for this form of landownership must be practically extinct in Scotland. One must never underestimate the influence of law upon landscape. Cultural forces, as well as natural forces, make their imprint on the face of the earth, one obliterating the other, and the geographer is faced, in his interpretation of the

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1. The Committee on Sheriff Court Records, H.M.S.O., March 1967. Paragraph 21 states, 'The evidence of researchers speaks of the poor condition of records held locally [in Sheriff Courts], the lack of lists and other guides to show what is available ...'
 2. Macandrew v. Crerar (1929 S.C. 699). A commonalty known as Cow Park, consisting of 99 acres, was divided in Perth Sheriff Court.

landscape, with forces which, in the passing of time, can bring about total change in all that we survey.



CHAPTER IV

Landscape and Commonly

Commonly and land utilisation

Prior to the agricultural revolution in Scotland in the eighteenth century the degree of choice in land use was limited by technology, demand and desire: all were on an extremely low level. Most farming was done on a subsistence level and little surplus was produced. The towns did not rely exclusively on rural surpluses but maintained a rural economy of their own.¹ The land use pattern was based on the permanently cultivated infield, the occasionally cultivated outfield and permanent grazing on the moorland beyond. However, the moorland was not used solely for grazing but also had many other land uses - building materials, fuel, food, etc.² Often this land was shared by several adjacent settlements and was a commonly (Plate 27). The only variation from the infield-outfield system was runrig, which was based on the equable division of infield among co-operative cultivators. As Third has shown, this equable distribution of rigs had broken down by the eighteenth century. Although the field pattern remained, the underlying egalitarianism had been lost. In other words, once the pattern had been fixed, no innovations appeared until the enclosure movement of the eighteenth century.

1. See below, Chapter V, 126-30 2. See above, Chapter II, 47-67

Plate 27. Relationship between township, infield, outfield, head dyke and common grazing shown on a plan made by William Cockburn, 1756, when he was employed by the Commissioners of the Forfeited Estates (RHP. 3482)

ARKS

Full foot
M^r Hope's
Cuckling Stroud
Town of Falkland
LANDS

N^o 57
19
21 22
33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52
27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52
33 a 33 b 33 c 33 d 33 e 33 f 33 g 33 h 33 i 33 j 33 k

Baillie Halkerston
Alex^r Lawson
Will^m Beveridge
TEMPLE LANDS
Geo. Kelly
59 60 61 62

N^o 63
KILGORE KNOLL
M^r Johnston's Loan
N^o 63

N^o 66
N^o 67
N^o 61
N^o 69
D R U M S

NGING MYRE
EAST CONLAND

The enclosure movement in Scotland arose through the desire of a few individuals for greater efficiency of land use. Efficiency was increased in two ways: first, by harnessing technological innovations like rotation of crops, liming, manuring, new varieties of animals and crops, etc. Secondly, by rationalising the land use pattern. In Scotland this was accomplished by the landowner dividing and enclosing his own land, usually with the assistance of a land surveyor.¹ On the other hand, if more than one proprietor was involved, legal action could be resorted to; for the Scottish Parliament had provided a series of Acts for the straightening of marches, planters and inclosers of ground, consolidation of runrig and division of commonty.² Once these legal proceedings had been brought to a conclusion the process of enclosure could proceed. Thus the generally poor-looking landscape of Scotland, with its open fields and rough moor, gave way to hedged, dyked and fenced fields bounded by plantations and shelter belts.

It was into this latter category of improvement that division of commonty fell. The use of land could be made more efficient if each owner had his own portion delimited. Once this was done he could assume responsibility for improving its quality and, of course, reap the benefits. On the whole, with the exception of

1. See above, Chapter I,

2. APS. 1669, c. 38; 1685, c. 49; 1695, c. 36, and 1695, c. 69 respectively

Shetland's scattalds, the area occupied by the commonty underwent a radical change in land use after division. The former functions, as discussed in Chapter II, gave way to more specialised use. The commonty of the Lomond Hills, Falkland parish, Fife, affords a good example of the changes of land use after division (Plates 7 and 28). 'While undivided, no improvement could be made upon them, so that they remained from one generation to another without plantation or enclosures. But immediately upon the division taking place, the large heritors, Mr Bruce of Falkland, Mr Johnstone of Lathrisk, and Mr Balfour of Balbirnie, proceeded to subdivide their respective portions, which had the effect of greatly improving the appearance of the country and raising the value of the lands.'¹ The author then goes on to describe the first few years after division: 'after tearing up the natural soil, taking one crop of oats off it, liming and draining it the following year, taking another crop of oats off it, and then laying it down in grass, the annual value of the land rose from something merely nominal to a grass rental, in some instances of £2 per Scotch acre.' In 1800 Thomson, writing his General View of the Agriculture of Fife, made this prediction as to the potential of the Lomond Hills.

'The following information, afforded me by a neighbouring heritor, appears to place the matter in a new and important point of view, and shows how highly advantageous the division of this commonty would be to all concerned. This gentleman had lately enclosed about 170 acres of ground contiguous to, and very much the same quality of soil, with the Lomond-hills.

1. NSA. ix, 934

This ground, in its former open state, yielded rent of little more than 15d per acre. Last year he let it as a grass park for 50 guineas; and this year, although one of the most unfavourable seasons experienced for a long time past, it has maintained above 70 head of cattle. From the above experiment, this gentleman makes the following calculation: the Lomond-hills are of a quality no way inferior to the park above mentioned, and about 20 times its extent. Therefore he reasonably concludes, that in a divided and enclosed state, they would maintain above 1400 head of cattle. If grazed with sheep, the profits would probably be still greater. A very different return, indeed, from that which the proprietors now draw from it, in its present neglected state.'¹

Yet it was not always recommended to plough or graze divided commonities. Since many were on the margins of economic cultivation or on the poorer soils, plantations were favoured for their increased profit. 'In the management of divided commonities, an error may be committed. The desire for immediate profit may blind the eyes of the proprietors, and induce them to appropriate a greater proportion of them to tillage and pasture, than is proper. This ought to be guarded against. Most of the grounds in question, it is apprehended, are incapable of being improved to advantage, except by planting; that is, they will in no other way yield an adequate return for the expenses that must necessarily be incurred'.²

Contemporary opinion amongst landowners was practically unanimous in praise of division. Criticism of commonities took

1. Thomson, J., General View of the Agriculture of the County of Fife, Edinburgh, 1800, 231

2. Ibid.

several forms, either stressing the inefficiency of land use, or else emphasising the moral aspects, especially the debilitating effect of the commonry on the cottars. The parish minister of Falkland could thus note that 'the division of the commonry had been advantageous so far as the moral character of the people is concerned. Formerly, many individuals, nicknamed scrapies, kept horses and cattle in the town, and if fame may be believed, supported them by pilfering freely from their neighbours, but when questioned how they supported their cattle, the ready answer was, "Oh! by sending them to the hill". With the division of the commonry, however, that dishonest generation passed away.'¹ On the other hand, the minister of Cummertrees parish stressed the financial benefits that could accrue: 'the valued rent is 3181 merks, the real rent about £2800 sterling, and what may appear extraordinary is, that the real rent in the year 1733 ... was little more than £500 sterling. This great advance is only ascribed to the discovery and the use of lime, and the division of the commons.'² Another minister, this time in Glenisla, put forward a much more practical viewpoint: 'It should be mentioned, that upwards of 10,000 acres of hill ground have, in course of the last twelve years, been divided among those proprietors by whom they were formerly held in common. Several of these allotments in the lower district are already covered with thriving plantations. This is one of the good effects of the division of commons, which it is to be hoped, will in a few years be more generally observed in the parish: while the improvement of

2. Sinclair, Sir John, *General History of the Agricultural State*.

1. NSA. ix, 934

2. OSA. vii, 308

livestock, and an additional quantity of land under tillage, are other results from the same cause, which may pretty confidently be anticipated.'¹ Sir John Sinclair summed up the view at the beginning of the nineteenth century: 'on the whole, the extent of land occupied in common, is rapidly diminishing, and, it is to be hoped, that this mode of occupation will soon cease to exist'.²

There was another side of the coin. The landless cottar was less likely to have his views recorded, but from the general tone of the evidence given in division of common processes, there seems in many cases to have been little resistance to division. Indeed, at times a great deal of trouble was caused by the common remaining undivided. In evidence taken during the division of the Forest of Alyth a picture of near warfare emerged:

'On 18th June, 1760 the people of Blacklunnans and Bleton, in a numerous body proceeded to pull down a part of the pursuer's mill of Drumturn, and mill dam, threatening to destroy it wholly. A short time thereafter, when the pursuer was about to erect his summer sheiling, as usual in the middle of his ordinary pasture, these good people turned out a second time in greater numbers than before, about three score men, with clubs and staves, and other weapons; and before the sheiling was finished, after abundance of abuse of language bestowed upon the pursuer and his servants ... they rased it to the ground, and made a bonfire of the timber. And then Mr Robertson of Bleton proceeded to build a sheiling to himself hard by the same place.'³

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1. NSA. xi, 433-4
 2. Sinclair, Sir John, General Report of the agricultural state, and political circumstances of Scotland, Edinburgh, 1814, i, 169
 3. Printed Session Papers in Signet Library, 55:1

The only really violent attempt to stop a division occurred in East Lothian when the commonty of the Muir of Aberlady was divided in 1786. This was one of the rare cases in which a village had established rights upon the common, if not by legal process, then by common usage. Consequently, when an attempt was made to exclude the villagers from what they believed to be their 'rights', they objected most vigorously. When the land surveyor, William Bell, and his assistant went to survey the common on the 7th of August 1780 they saw:

'a man blowing a horn, and a great many women to the amount of between twelve and twenty running to him. Some of them had axes carrying, some of them sticks, some ropes, some hooks, some stones, and when my partner and I entered the commonty this man with the horn (whose name we afterwards learned was Forrest and an old soldier) came at the fore end of the crew, and in an impertinent manner asked what I was seeking there. I honestly told I was come to divide the commonty in obedience to an order of the Lords of Council and Session. Upon this he came forward in a most passionate and insolent manner and shook his horn within a few inches of my face and swore the Lords were all damned scoundrels, but by God neither them nor I should divide it that day, otherwise there should be bloodshed ... and several of the women shook their sticks at my partner and me, and by way of derision asked us how we would like to kiss these ... we left them and went home, and they followed us most of the way shaking their sticks at us, giving us bad names and at last went dancing home in triumph.'¹

The surveyor usually bore the brunt of any displeasure shown by local inhabitants, as Charles Mercer found when he tried to survey the south common of Lochmaben. His plan bears the rather

1. SRO. Hopetoun v. Portmore (EP. Dal. 28/2/1786)

forlorn note: 'This open space represents a large tract of ground. In the surveying thereof I was interrupted by the kindly tenants in Hightae who alleged it was their property and not commonty ground.'¹

On the whole, however, the divisions were undertaken in an extremely orderly fashion. Witnesses appeared before the commissioner and gave articulate and detailed evidence as to the rights of servitude and the traditional boundaries of the commonty.² Certain reservations must be placed on this statement, for the tenant farmer rarely had his view recorded other than in giving evidence on behalf of his landlord prior to division. Sometimes, as in the following extract, both the landed and landless interests had their views recorded, although in a somewhat biased manner. Roxburghshire had many commonties and lands in runrig in the eighteenth century which were regarded as follows in the early years of the nineteenth century:

'Lands, thus aukwardly possessed, and wretchedly managed, might not improperly be called wastes; and through acts of Parliament passed, so early as year 1695, for dividing them, at the instance of any proprietor having interest, yet no advantage was taken of such beneficial laws, till the year 1738 or 1739, that the lands of Smailholm were parcelled out among the several proprietors, in proportion to the valuation, or rate, by which they paid the land-tax. At that time, a mighty clamour was excited, and renewed on every subsequent division of a common, that the poor were spoiled and oppressed, and the country was ruined, to enlarge the possessions of the great. This cry became louder, when several farms, lying

1. RHP. 218

2. See Division of the commonty of Hassendean, appendix iii

contiguous, were thrown together, to make one or two compact and commodious farms, on which tenants could subsist more comfortably at an advanced rent, by having it in their power, to make inclosures of a competent size, to do more work with the same number of hands and cattle, and consequently to draw more profit from the same extent of ground. Through the influence of these popular prejudices, the division of commons and blended property went slowly for some years; but the sense of private interest, and of general good, by degrees, has broken these absurd fetters, and there has not been a single common in the whole county these 20 years.'¹

This extract brings to the fore five important points. First, the proprietors recognised the inefficiency of this type of land use. Secondly, the legal apparatus for division was not utilised in Roxburghshire in the first forty years of its existence. Thirdly, the poor did have a vested interest in commonties, but as this extract was written from the vantage point of the proprietor, this was ignored as having no legal basis. Fourthly, the profit motive was introduced remorselessly into agriculture. Finally, private interest and 'general good' united to eradicate Roxburgh's commons completely by about 1790.

Population and division of commonty

As well as a change in land use, a division of commonty brought about a profound change in the distribution of population. Of course this was not solely due to division of commonty, but was a part of a much broader reorganization of agriculture. The nucleated township fast disappeared and was replaced by the

1. Douglas, R., General View of the Agriculture of the Counties of Roxburgh and Selkirk, London, 1813, 124-5

individual farmstead. In terms of population distribution and especially density, the implications of this were considerable. Large-scale population movements were initiated in the countryside at the same time as the industrial town was beginning to grow. These large-scale changes were inevitable whenever the delicate balance of Scotland's older rural economy was tampered with.

Firstly, it was basically a subsistence economy relying on the land to provide food, fuel and shelter. Input was largely peasant sweat and some manure on the infield. Output was a small surplus sold off at local markets. The balance was such that the system had survived from time immemorial, as long as there was no rise in expectations. So great was the Scottish peasant's resilience that he could face famines in which many of the community died, only to re-establish the system when better times returned. He could do this because he did not expect anything more than a good and bad cycle. It was only the progressive example of some of the early improvers, who had observed better techniques employed in England and elsewhere, that led the Scottish laird and his tenants to desire more than subsistence. Once this rise in expectations occurred, the system was thrown off balance and great changes were set in motion.

If the changes had been technological ones only, then the system might have been able to continue. What was significant was the change in land use. Gone were the scattered holdings. Gone was the unfenced field open to depredation by the slackly guarded flock. Gone was the continuously cropped infield. Gone was the occasionally tilled and under-used outfield. Gone was the commonry with its valuable source of fuel and building material.

The peasant could survive, to some extent, when his holdings were consolidated, but he could not survive the cutting off of his fuel. The great controversy over the division of the commonry of Coldingham revolved around this question. 'All the inhabitants were averse to the division, because they foresaw, that this servitude [of divots], and that of the peats and turfs for fuel, would be much confined.'¹

There was general recognition that the improved methods of farming were not increasing the numbers employed on the land, but were indeed causing a drift to the towns. 'The cause of the [population] decrease, between 1763 and 1784, is imputed to a division of the commons in the parish, which took place about the year 1770. The poorer sort of people, being thus deprived of some of their former privileges, removed to the neighbouring towns of Lockerbie and Ecclefechan.'² Again, in Dumfriesshire, the parish of Cummertrees lost about forty of its farmers to America. 'Notwithstanding the quantity of waste or common land brought into cultivation in the parish, it is doubtful whether the population has increased since the beginning of this century.'³

Of course, immediately after division there was considerable amount of work for fixed wages. When the fencing of fields, digging of ditches, and other improvements had been completed, the bulk of the labourers were paid off, and, not having the old subsistence economy to fall back on, they drifted into towns or emigrated.

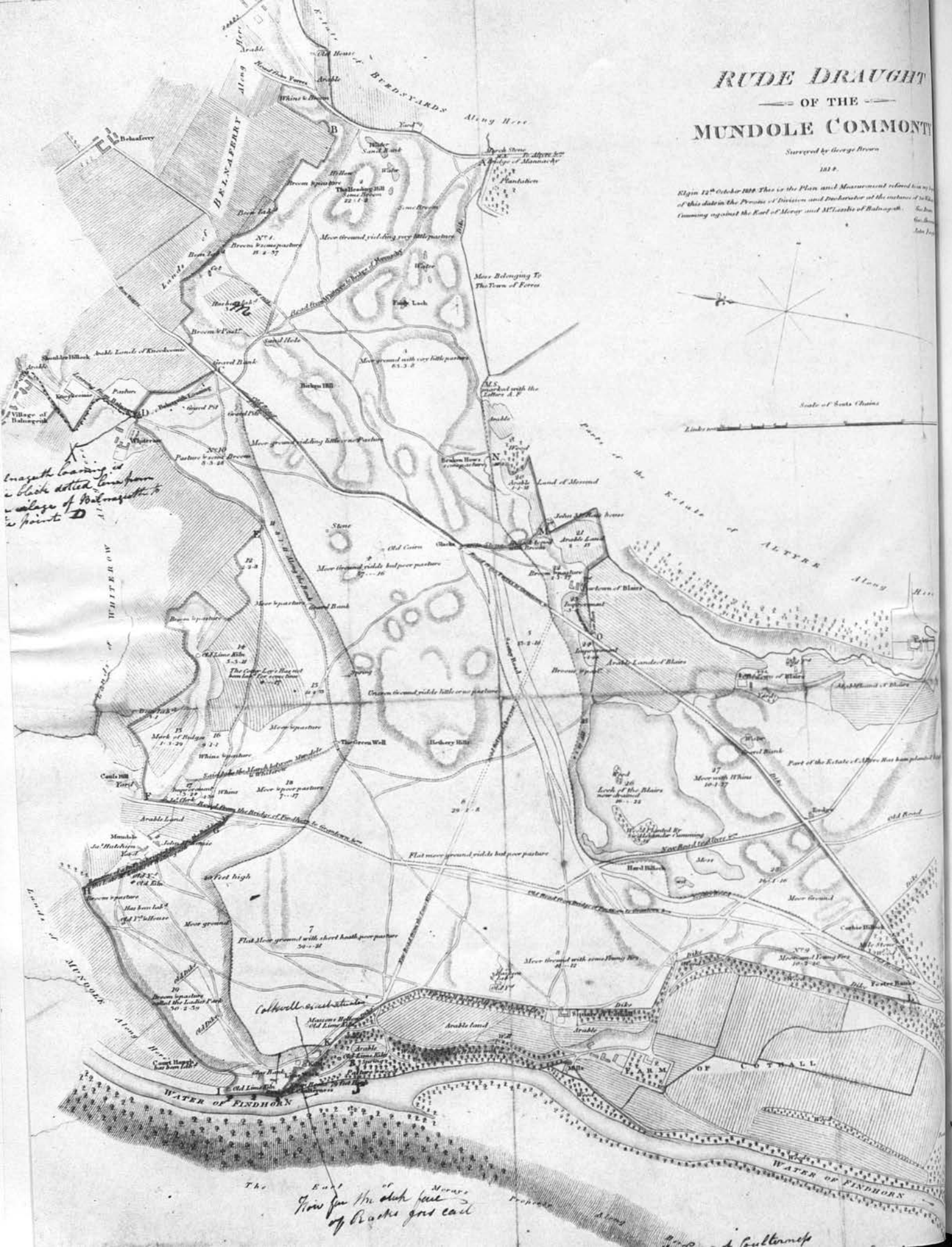
1. OSA. xii, 47

2. OSA. xi, 386n

3. OSA. vii, 305

1218

Robert J. ...



Changes in landscape

Most contemporary writers are unanimous in their opinion that commonties were an eyesore on the landscape, and that they encouraged the poorer people to have squalid dwellings. For example, responsibility for the dismal appearance of the village of Coldingham was placed firmly on Coldingham Common: 'before the common moor was divided, this town was dull and unpleasant in appearance, as all the houses were covered with turfs and divots from that moor'.¹

Prior to division the commonty was barely distinguishable in appearance from the outfield or moorland (Plate 29). The landscape of Scotland in the eighteenth century lacked the trees and hedges which were common in England at the time, and the landscape gave an impression of being one great moor. Ill-drained, often overgrazed and never cultivated, it formed a depressing sight to the newly inspired improving laird. Once the proprietor had steered his case for division of commonty through the Court of Session, he was free to make his mark upon the landscape. 'The commons have all been divided and subjected to the plough or planted with various kinds of trees for which they were considered to be best adapted. And they now, instead of presenting to the eye a naked and barren landscape, enliven with verdure our higher grounds.'²

1. OSA. xii, 47

2. NSA. ix, 107

Plate 29. The landscape of the commonty of Mundole, Forres parish, Moray, prior to division showing paths extending in all directions and the poor pasture, 1814 (RHP. 4005)



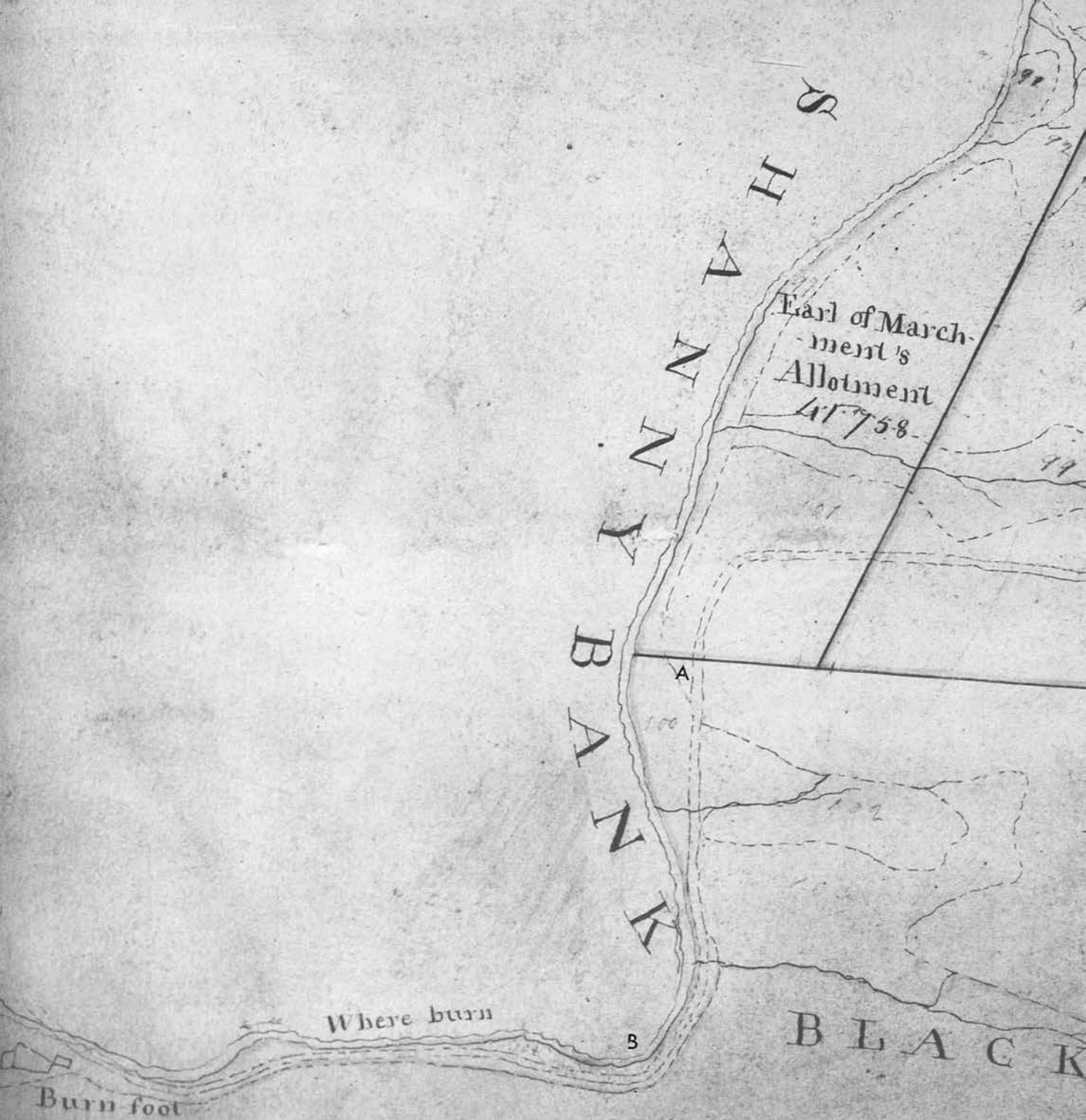




Plate 32 (above). Aerial photograph of part of the commonty of Coldingham showing how the surveyor's allocations have been etched onto the landscape.

Plate 33 (opposite). Part of Alexander Low's plan of the commonty of Coldingham, made in 1772, corresponding to the area shown on the aerial photograph above (RHP. 155)

[illegible]

Pennant's plaintive cry as he passed that way in 1769.¹ Alexander Wight, who made a survey of agricultural improvements in Scotland for the Forfeited Estates Commissioners, was dismayed at the doleful landscape of Coldingham Moor when he first surveyed the area in 1773. Between his first and second surveys, nine years elapsed and in the meantime, in 1766, a decret of division of commonty was obtained. On his return in 1782 the commonty was thus in the hands of individual proprietors who had set about improving it with remarkable vigour. Alexander Low had been the surveyor in the process and his plan was used as a basis for the division (Plate 30).² The shares were integrated into the adjacent lands and the boundaries became lines upon the landscape, having been transformed from surveyor's pencil marks into stone dykes. Many of those lines on the present-day landscape, therefore, are explicable in historic rather than geographic terms. The lines are straight, the product of a rational mind, rarely recognising the geographical framework.

Moreover, the system of land use that evolved after division paid little or no attention to natural features, but depended rather on the inclination and capital of the recipient at the division or on those of later proprietors. Thus the boundary between the allocations shown on Low's plan now marks the division between arable land and unimproved grouse moor (Plate 29).

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1. Pennant, T., A Tour in Scotland and Voyage to the Hebridies, London, 1772, iii, 53
 2. RHP. 62 (MS. original), RHP. 155 (lithographed copy dated 1828), RHP. 6144 (photocopy of MS. original in private hands)

Returning to Wight's account we find that the variety of the problems involved immediately after division was fully appreciated. The following extract, although of considerable length, is quoted in full to illustrate the massive scale of change that the Scottish landscape underwent in these momentous decades towards the end of the eighteenth century.

"Coldingham was the first place in this county [Berwickshire] to which I directed my course. There I inspected a common of 6000 acres, formerly a dreary waste, without a tree or a single pleasing object to cheer a traveller, but now the subject of much industry; parts are inclosed, trees planted, corns growing, and cattle pasturing upon pretty good grass. The present attention to husbandry, and the industry of the proprietors upon the parts allocatted to them in the division, will soon make a capital figure; and a great tract, formerly useless, or worse than useless, by enticing the ignorant to starve their cattle upon it, will in time produce to Scotland a considerable increase both of population and riches. Such are the advantages of separate property in land, to which all men are addicted by their very nature.

"Luckily for the improvement of this moor, lime is within reach; and the solid way of improving it is by ploughing and liming. One thing I must take upon me to suggest to the operator, which is, not to be in a hurry to lay down the ground in grass: impatience will certainly disappoint him. A moor that has never felt the plough, is of a loose texture, and full of pores. In such a soil heath is the only plant that grows to perfection; and if the land be laid down which in any degree is porous, heath will infallibly return, and overcome every other crop. One good way to make the soil compact, beside frequent ploughing, breaking and harrowing, is to sow turnip, which prosper in new ground, and to hurdle sheep upon them in winter. The paddling of the sheep, and what they drop upon the ground, contribute mightily to unite the parts, and to make the soil firm and waighty.

"I must here observe, that this moor requires so much labour and expence to make it productive of tolerable good crops, that it is in vain for a tenant, with a lease of an ordinary endurance, to attempt any improvement upon it. This is a work to be done by the proprietor only; and even he must consider it as purchase; and if he so conducts the improvement, as the amount of cash expended, after deduction of what may be made of interim crops, does not exceed twenty years purchase of the rent got as last for the land, the proprietor is highly rewarded. The most eminent improvers of this moor are Sir John Home of Renton, Sir James Home of Coldingham, Mr Home of Wedderburn ... Mr Fordyce of Aiton, Mr Johnston of Templehall and Mr Darling of Bogangreen. The last has ventured to sow wheat, which I am afraid is precipitant.

"Sir James Home of Coldingham has advanced briskly in making improvement upon 280 acres of the muir which came to his share. I will give a short sketch of his improvements, as a sample of the whole that is done upon this extensive wild. Two years fallow reduces it to a degree of tilth proper for the lime, of which forty bolls of lime-shells is thought by Sir James sufficient for one acre, if reduced to a fine powder, and mixed with the soil equally. The last and fifth furrow is given in the month of September, which serves for the feed-furrow to oats, which are sown in the spring, when the land is dry: average crop is three bolls per acre; 2d oats, which yield four bolls. Grass-seeds are sown at this time, if pease are not to be the next crop, as a meliorator, and preparation for barley and grass-seeds; of which I rather approve, although the grass among the oats wore a goodly appearance. But I am confident heath will not be long of resuming its superiority, as the soil will still be porous after two crops of oats only. Sowing turnip for sheep would be beneficial, as they paddle the ground while they are feeding, which is excellent for uniting its parts compactly. This tends to prevent heath from rising again, to which Sir James pays great attention, being zealously concerned for the improvements of this muir. Appearances are indeed flattering. The pease surprised me,

when I compared the crop of them on the ground with the soil; as did the barley also. But our improver is at uncommon pains to cultivate highly. The state of his grass-crops show it also. Indeed, if grass will thrive at all, it is to be expected from the management here, as it is but half eat up. A full stock of cattle is never permitted upon the pasture; and that which remains is full of seed, which falls plentifully on the ground from the rye-grass; and every vacant space on the surface is supplied annually.

"Sir James is anxious to complete his improvement, and in such a way as good tenants might be tempted to farm this muirland. He has already built neat little farm-houses and offices, with the view of procuring good tenants. An offer has accordingly been made by one farmer, of 5s 6d for the English acre, which I think a good rent: but our improver is not of that opinion, as it is not nearly adequate to the expenditure for improvement, which he has not yet recovered by any profit that had redounded from the crops. Two shillings more for each acre he would be pleased with; but it cannot be got now. He is therefore resolved to carry on the improvement, until a higher offer be made, and in the mean time will be bettering the soil by good culture, manure and cropping sparingly.

"One mode of improvement, far from being labourious or expensive, I gladly recommend. Suppose a hundred acres, for example, of the most barren parts, should be planted with fir. When the trees are fully clothed with branches, which exclude the air, begin to weed, so as to give them space to grow. After twenty years they may be cut, and the ground formed into squares of fifteen acres each, leaving five or six rows round each inclosure; and if hard wood be planted timeously in these strips, so much the better. The roots of those trees that are cut, when rotted, with the leaves that have fallen annually, will make a mixed vegetable soil, which, upon ploughing and liming, will be a good preparation for pasture-grasses, and being so well sheltered, will give a good return by feeding cattle. Beside the improvement of the land, this mode of

culture will be not a little advantageous to this part of the country in general, which is far from coal, and at present almost destitute of any other fuel. The weedings of the plantations from time to time will be a very comfortable resource; and were but a thousand acres of the six thousand planted this way, it would give fuel to the poor people far and near."¹

Wight ranged over many aspects of division, but his stress on the need for careful preparation before bringing the common into production illustrates the fact that large capital resources were required to integrate former common land successfully. Time and again during a division of common, the small landowner willingly sold his rights to the common to a more powerful neighbour. In the case of Hassendean Common five of the smaller proprietors sold their rights to the remaining nine.² Even before improvement could be undertaken, considerable costs, based on the value of common allocated, were incurred. To divide the common of Hassendean cost 5s 8d per acre in legal expenses. An even more expensive process took place in Dumfriesshire in 1778 when the common of Pilmuir (or Bengall) was divided.³ It cost £1050 6s 5d to divide 2490 acres, averaging 8s 5d per acre. The table below, taken from this process, illustrates a typical division of the costs involved in the legal aspects alone.

Only one proprietor sold his share to a neighbour, but in this case most of the people involved had a considerable share in the common.

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1. Wight, A., Present State of Husbandry in Scotland, Edinburgh, iv, 532-8
 2. See Division of the common of Hassendean, Part III, 127-9
 3. Queensberry v. Annandale (EP. Mack. 5/3/1778)

Heritors	Valuations Marks	Proportions		
		£	s	d
The Duke of Queensberry	1240	297	7	6
Mr Johnston of Lockerby	1071	256	16	6
Mr Carruthers of Holmains	275	65	18	10
The Viscount of Stormont	700	167	17	1
Mr Muir	30	7	4	3
William Martin of Highlaw	125	29	19	5
[] Bell of Skellyholm	130	31	3	3
Alexander Martin of Blackford	40	9	11	9
Helen and Agnes Carruthers of Nutholm and husbands	175	41	19	2
Mr Imrie, minister of St Mungo	50	11	19	9
The Marquis of Annandale	50	11	19	9
Mr Lidderdale of Castlemilk	460	110	6	1
Do., as now having right to share of the common allotted to the lands of Castlemilktoun formerly belong- ing to George Bell of Skalehill	34	8	3	1
	<u>4380</u>	<u>£1,050</u>	<u>6</u>	<u>5</u>

Landscape change on the scale that was found in Scotland towards the end of the eighteenth century required large amounts of capital. Often landowners incurred considerable debts in order to finance their schemes. Even when bankruptcy ensued, the work already undertaken had an enduring effect.

"Our Sovereign Lord with advice and consent of the Estates of Parliament for preventing the disorders that arise about commonlands, and for the better and expedite deciding thereof,

CHAPTER V

Burgh Commons

In Scotland an important class of common land belonged to royal burghs. The burghs were the market and industrial centres of medieval Scotland. They held, over surrounding areas, important trading and industrial monopolies which were stringently enforced. Consequently, beyond the fermtoun or kirkcoun, whose functions did not go further than those indicated by their respective names, there were few villages in Scotland. The royal burgh held a privileged position, as is evident from the content of many Acts passed by the Scottish parliament to protect and enforce their rights. For example, common lands belonging to royal burghs were exempt from the 1647 and 1695 Acts which were passed to facilitate the enclosure of commonlands:

"The Estates of Parliament taking to their consideration the complaints of severall heritors within the sheriffdoms of East Lothian, Midlothian, Linlithgowshire, Air, alledging themselves to be heavilie wronged in the commonlands and muires they have richt by some of their nightbores that lyes narrest to these commonlands ... doe remitt the complaintis of that kind to the Lords of Session ... with power to them to find out and prescrive the justest and most equitable way for dividing such commonlands ... excepting heirfra the commonlands belonging to all burghes royal ..."¹

And again in 1695:

"Our Sovereign Lord with advice and consent of the Estates of Parliament for preventing the discords that arise about commonlands, and for the easie and expedite deciding thereof,

1. APS. 1647, c.430

in time coming, Statutes and Ordains, that all commonties, excepting the commonties belonging to the King and Royal Burrowes, that is all that belong to his Majesty in property, or Royal Burrowes in burgage, may be divided at the instance of any having interest ..."¹

This exemption, instead of protecting the towns' commons, became a licence for their disposal. In the judgement of the Royal Commission on the Municipal Corporations in Scotland in 1835: 'The fact that almost all the Scotch burghs had originally extensive possessions, of which the far greater portion is now lost to the community, is so universally known and admitted, that we did not think it necessary to ascertain the full extent of those alienations by which their original endowments have been gradually so much diminished, and have thought it sufficient to restrict our inquiries to such acts as have taken place within the last forty years'.² Even under this self-imposed restriction, they could not help succumbing to the temptation of giving three examples of the gross alienations of earlier times, of which the following is one. 'The whole parish of Ayr, at one time, belonged to the burgh. It fell into the hands of the Crown by a feudal casualty; but James IV, by a charter dated 16th February 1507, again granted it to the burgh, with a power of alienation, which has been so freely exercised, that nearly the whole has been granted in feu.'

However, the forty years prior to the setting up of the commission provided ample evidence of the questionable practices

1. APS. 1695, c.69

2. Municipal Corporations (Scotland) General Report, London, 1835, 30

3. Op. cit., 31

by local oligarchies: 'From 1812 to 1817, numerous superiorities in Mid-Lothian were sold by the town council of Edinburgh to members of its own body and their friends. The sales were made without advertisement, or notification of any kind, and without evidence of value; and, although the transactions were immediately beneficial to the city, and have proved ultimately unprofitable to the purchasers, they were so conducted as to deprive their authors of the credit of having acted on any public principle. One of the town council of Inverness, in 1797, privately purchased, for an inadequate price, and a small feu-duty, lands close to his residence, which, although presented in the minutes of council as "barren and of no use", were improved at small expense, and let for a yearly rent nearly equal to the consideration given. In Tain, from 1774 to 1816, there were numerous alienations to members of council, by private bargains, and for inadequate prices. The burgh of Renfrew made four different sales to the provost; and, in every instance, the proposal for the sale originated with that magistrate himself, and was sanctioned by his official signature. In one instance, it is expressly stated in the minutes, that the only reason for the sale was that it would be beneficial to the provost; and in no instance does there appear to have been any necessity for the sales, in order to raise money for the use of the burgh.'¹

... consisted of 240 acres of arable land, divided between 40 persons with pasturage upon the commons.² Again,

1. Mackenzie, W. Mackay, *The Scottish Burghs* (1949), 163-4

2. Pryde, G.S., *The Burghs of Scotland*, Glasgow, 1965, 58

The common as a part of the rural economy of the town

The original purpose of the burghs' common good, which included the common lands, was to enable the burgh to discharge its local and national obligations without recourse to taxation. W. Mackay Mackenzie, in his Rhind Lectures for 1945, pointed out that 'this connection with property in land has led to some confusion of ideas. It has been taken to signify that burgesses at the beginning and generally to some degree were farmers, thus harking back to the conception of the burgh as an agricultural unit and obscuring or diminishing the fact, patent in all the charters, that it was in origin and nature essentially a trading community. Hence burghs were not ipso facto in possession of land; that had to come by a special grant'.¹ Although the burgh was a trading settlement, the burgesses had to rely on the burgh lands for many of the essentials, such as cornland, pasture, fuel and building materials, that constituted a rural economy. The town was never completely divorced from the land, for the townsman could still participate in rural activities and, in consequence, his demands from the surrounding lands were the same as those of any other farmer.

The burgh common provided in part all of these necessities on a basis of communal sharing. Kilmaurs, erected a burgh of barony in 1527, consisted of 240 acres of arable runrig lands divided between 40 persons with pasturage upon the common.² Again,

1. Mackenzie, W. Mackay, The Scottish Burghs (1949), 163-4

2. Pryde, G.S., The Burghs of Scotland, Glasgow, 1965, 58

Newton-upon-Ayr, an ancient burgh with its 'evidents' destroyed but erected in liberum burgum in 1595, was divided between 48 freemen who had exclusive right of pasturage upon the common.¹ Initially the burgh common provided fuel, in the form of peat, turf or timber; building materials, in form of divot, stone or timber and, most important of all, pasturage.

The perishable nature of milk made it very difficult to gather from a wide hinterland, due to the primitive condition of the roads of medieval Scotland and pasturage, therefore, formed the basic function of the burgh common, for both cattle and milch cows. There are references to this very important function in the records of Glasgow, Edinburgh, Ayr and Stonehaven. The commons of Glasgow had long been the pasture ground for milch cows. For example, the magistrates were petitioned in 1576 not to alienate any more of the common lands, so necessary as pasture 'for the sustaining of our babies'.² Not only was this an emotional appeal, but it also shows the importance in which the common was held because it provided this very important product. Again in Glasgow, the cattle from the lower district were collected by the herd and driven through the West Port, and up Cow Lane to Cowcaddens parks (Plate 38). In 1589 two herds were appointed by the magistrates 'for this year to come' to herd 'nolt and guidis' (black cattle and milch cows).³ No one was allowed to pasture his cattle apart from the common herd. A minute in

1. OSA. ix, 368

2. Macgeorge, A., Old Glasgow, Glasgow, 1888, 166

3. Op. cit., 168



Loca Urbis notatu digna.

- a. Arx.
- b. Arcis capella.
- c. Porta occidentalis.
- d. Porta societatis.
- e. Porta figulina.
- f. Porta bovina.
- g. Porta plateæ Sanctæ Mariæ.
- h. Inferioris arcus porta.
- i. Lethæus plateæ porta.
- k. Porta agatica.
- l. Templum prope arcem.
- m. Templum magnan, seu S. Agidij.
- n. Templum ad Libram.
- o. Templum occidentale, seu franciscanorum cum cimiterio publico.
- p. Templum collegiatum.
- q. Templum domine de yefflor.
- r. S. Magdalena capella.

- w. Academia.
- x. Schola.
- y. Rudera.
- z. Templum.
- 1. Suburbium.
- 2. Suburbium.
- 3. Suburbium.
- 4. Suburbium.
- 5. Suburbium.
- 6. Nivium.
- 7. Suburbium.
- 8. Suburbium.
- 9. Platea.
- 10. Domus.
- 11. Curia.
- 12. Crux.

Glasgow's council records notes that 'John Hogisyarde is fund in the wrang and amercement of court for holding ane kow by [apart from] the herde, contrare to the statuts of the toune; quhilk kow was fund and gottin in James Flemynges corne' and the wrongdoer was ordered to make good 'the skaitht to the said James'.¹

Cows, returning to Edinburgh from a day's pasturage on the Burgh Muir, entered the city through the Cowgate (Porta Bovina on Rothiemay's plan, see Plate 34) to be stabled for the night in the burgage strips which ran down from the High Street. Ayr had between 80 and 90 acres of common land, free to every burgess, for feeding milch cows.² Restriction of the common to milch cows indicates that this function had a higher priority than simple pasturage. An eighteenth century estate plan of Dunnottar estate, Kincardineshire, shows a loan from the commonty of Smithy Muir to the town of Stonehaven as the Milk Road (Plate 35). The numbers of animals allowed on burgh muirs varied considerably. On one hand a tradesman could keep two essential animals on the muir - his horse for transport and cow for milk - whilst on the other hand cattle and sheep could be kept on a commercial scale. A case of the former was attested by William Samson, when he was seventy-seven

1. Macgeorge, A., Old Glasgow, Glasgow, 1888, 169

2. OSA. i, 91

Plate 34. Plan of part of the city of Edinburgh, 1649, by Gordon of Rothiemay showing the Cow Gate (f. Porta bovina) and runrig lands running right up to the City Wall (National Library of Scotland)



Uncultivate pasture

SMITHY MUIR

Muir and Pasture in common with the TOWN of STONEHAVEN

ALL LANDS of STONEHAVEN

URIES LANDS OF ARI

STONEHAVEN

BOGATIE HEAD

Bay of Stonehaven

Castle Haven

Dunnotar Castle

Upper Bank Infield

Arable Land

INVERCARRON FARM

TOWN OF STONEHAVEN

Ridges of Stone Beach & Gravel

Harbour

Pasture ground

Formstead

Arable Land

Arable Land

Arable Land

Upper Bontoun

Billwholly

Nether Bontoun

Grass and pasture

Downie

Boar Stone

Pasture

Forrests Acre

Sands & Beach

Quay

Rocks

Gravel

Gravel

Gravel

Gravel

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years of age, as he gave evidence in the division of the commonty of Kirriemuir in 1787. As an apprentice to a wright in Kirriemuir he recalled how his master had 'kept a horse and cow ... which pastured over the whole muir, and eat on any green ground they could find; and he was in the practice of keeping a herd for these bestial'.¹

When sheep and cattle were kept on a larger scale, their numbers were usually controlled by the practice of souming, i.e. letting grazing rights for certain numbers of animals. A soum of land varied in extent according to the quality of the ground, but it was generally understood to mean an extent of land sufficient for the grazing of one cow or five sheep. Thus, when in 1472 the burgh of Peebles soumed part of Cademuir Common, regulations were passed providing that only burgesses or widows of burgesses dwelling in the town should be entitled to the common.² Four soums was the maximum allowance to any person unless he could lease the soums of a poor neighbour. Not only were soums allocated but the types of animals were also stipulated. A part of the common called the Easter Hill was set aside for cattle and horses; and the Wester Hill was to be grazed by sheep. Keepers were appointed to see that the regulations were carried out. These

1. SRO. Lyell v. Smith (EP. M.H.B. 7/7/1819)

2. Buchan, J.W., A History of Peeblesshire, Glasgow, 1925, ii, 220-1

restrictions were typical and led to controlled exploitation, thus avoiding the worst pitfalls of over-grazing. It also had the further advantage of preserving the common as a whole, for as long as the common was soumed rather than feued out as separate pieces of land, fragmentation could not occur. But as soon as the practice began of feuing soums, there was a trend towards permanent annexation of the common to the feuar's property.

The common was an integral part of the agricultural system, the infield-outfield and its more sophisticated variant runrig, that was traditional to Scotland up to the eighteenth century. In a charter of 1611 by James VI to the burgh of Glasgow, the common land of the burgesses is described as terrae tam lie outfield quam infield, cultae quam incultae.¹ From this piece of evidence it appears that there was arable cultivation of the burgh lands as well as the better known pastoral function. This is not altogether surprising as they were closely related: the infield was used in summer for cultivation of crops and was turned over to the cattle after harvest. During the growing season the cattle were kept well away from the young crops, under the gaze of herds, in order to prevent any accidental grazing of the crops.

Non-rural functions of burgh commons

Medieval love of public display, pageantry, fairs and chivalry was, at times, focused on the common muir. This feature has not dimmed with time, as is shown by the common riding ceremonies of

1. Grant, I.F., The Social and Economic Development of Scotland before 1603, London, 1930, 287

the border towns - Hawick, Jedburgh, Selkirk, Langholm - whose year revolves around this ancient ceremony. The great patriotism that it gives rise to is shown in the last verse of this ancient song:

Up wi' Hawick, its rights and common,
Up wi' a' the Border bowmen!
Tiribus and Tirioden,
We are up to guard the common.¹

Their zeal, however, did not always have the success it deserved, for Hawick Common was divided in 1768.²

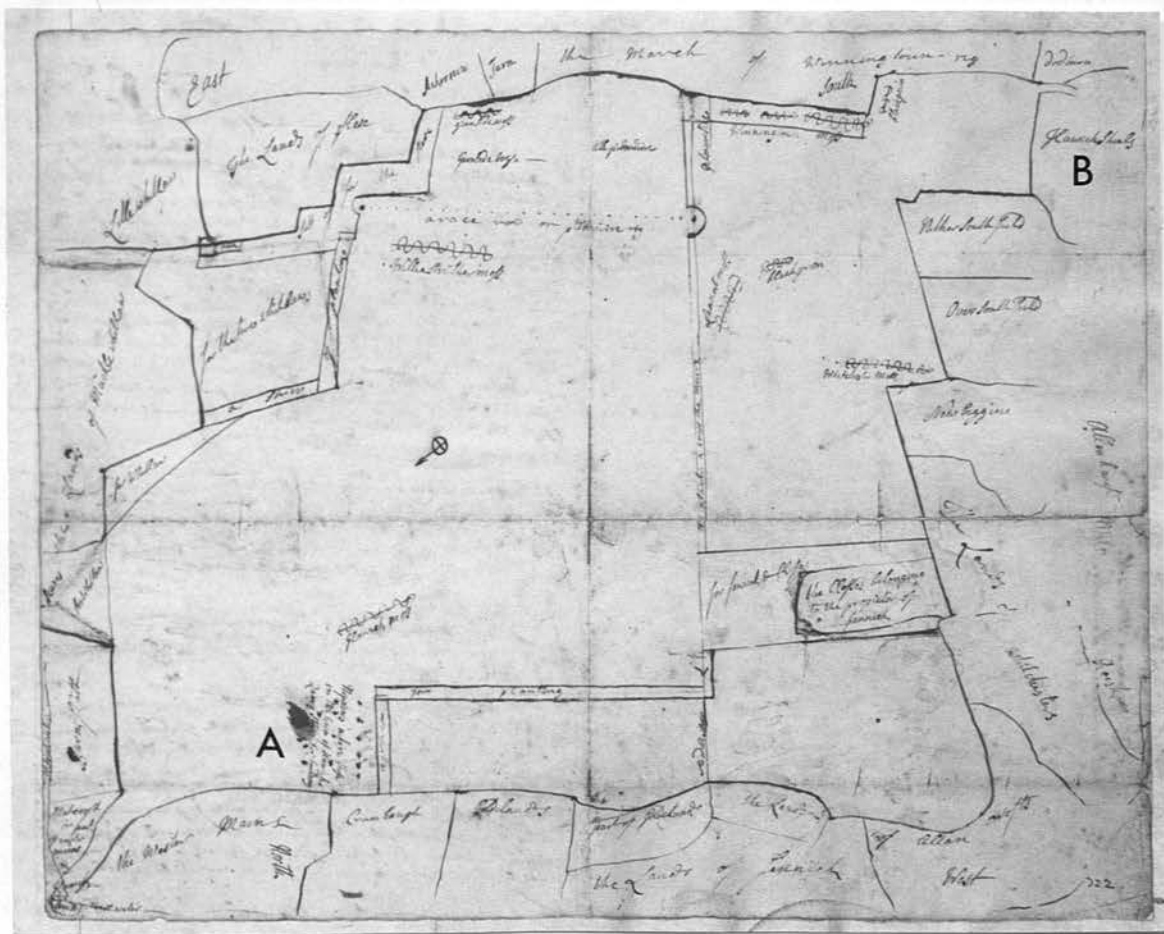


Plate 36. Rough sketch of Hawick Common showing its boundary prior to division in 1768. A: Nipnows, where those in the town of Hawick quarry stones for building. B: Hawick Shiels. (RHP. 722)

1. NSA. iii, 108

2. Op. cit., 399; Directory, 222-3

1508 Another ancient ceremony performed on the common was that of the quarterly meetings of the Weaponschawings.¹ This early equivalent of the Territorial Army paraded on the Easter Common of Glasgow, at a place called the Butts, near the Gallowgate.² A piece of ground called the Butts appears again on the South Muir of Liftie, Kirriemuir, Angus (Plate 37). Many a condemned prisoner's last glance of the world was that of the common muir, for in many towns the gallows were set up on a rise in the burgh muir. This rather sinister aspect is reinforced by the location of the medieval isolation hospitals. In Glasgow the chapel of St Roche, now the district of St Rollox, was situated on the common moor with a cemetery attached. It was here that the persons who died from the plague in the 1645-46 outbreak were brought. A similar church and cemetery existed on the burgh muir of Edinburgh and it was used in 1530 as an hospital for those suffering from the plague, and those who died were buried in the cemetery. The chaplain of this church did not go unrewarded, for two years later he was given four acres of the muir for saying prayers for the souls of those interred in the cemetery.

A great deal of quarrying took place in the various burgh commons. For example, Bruntsfield Links, part of the burgh muir of Edinburgh, was extensively quarried for soft grey sandstone from

1. APS. James I, 1425 c. 17

2. Senex, Glasgow Past and Present, 1884, iii, 1-71

1508 to the middle of the eighteenth century, by which time the Links were in an extremely wretched condition.¹ The humbler townsman had to be content with less durable building material, mainly turf and divot. Pennant during his visit to Scotland in 1766 left a pen-picture of this type of house which was 'formed with loose stones and covered with clods which they call devots'.² The cutting of divots ruined the common for pasturage and was, to a certain extent, discouraged. The unseemly appearance of much of the Scottish countryside and many of the towns was due to this primitive method of house construction. After enclosure, and division of the commonties and burgh muirs, a greater reliance was placed on stone for building purposes: 'Before the common moor was divided, this town [Coldingham, Berwickshire] was dull and unpleasant in appearance, as all the houses were covered with turfs and divots from that moor ... since that period, they have not only built a good many new houses, which they have covered with tiles, and some with blue slates, but they have rebuilt several old houses and covered them with this sort of covering; and the town has now a more lively and cheerful appearance.'³

Peat was exploited where the burgh common contained a moss. However, this was not as widespread as it may first appear, because mosses were quickly exhausted and only rarely do they survive into documented periods. In fact, the resources of peat near centres of population were exhausted as early as timber: fuel famine was

1. Bryce, W.M., 'The Burgh Muir of Edinburgh', Old Edinburgh Club, x

2. Pennant, T., A Tour of Scotland and Voyage to the Hebrides, London, 1772

3. OSA. xii, 47-8

widespread in Scotland during the period of growth of the burghs between the twelfth and sixteenth centuries. This caused an early appreciation of coal as a fuel: the first reference to coal in Scotland precedes that in England by some years. Peat roads were the name given to some of the tracks leading from Dumbarton to the burgh muir.¹

The fenceless surface of the common muir outwith the town allowed free passage to all crossing it. From this there arose a complex and often fluctuating pattern of tracks that represented the shortest routes between any two points. It was inconceivable to the traveller of this period that he should be confined to a narrow strip of road which did not always take the direct route. When steps were taken to enclose the common, thus challenging a long-held right of free passage, considerable ill-feeling was engendered. Two cases raised in the Court of Session, one each from Glasgow and Edinburgh, indicate that this imposition was strongly contested on both sides.

In 1772 Hugh Tennent, merchant in Glasgow, petitioned the Lords of Session requesting power to enclose his lands, which were part of the former Easter Common but had been feued out by the town. Unfortunately, his ground lay between the city and a stone quarry which had been retained by the burgh. The inhabitants continued to expect that they would be able to approach the quarry by the shortest route across the former common. Unhappily this did not coincide with Mr Tennent's improving spirit and he had to resort to legal action to restrict their movements.² The other

1. RHP. 3881 2. Senex, Glasgow Past and Present, 1884, iii, 8

case involved access to the former common lands integrated into the estate of Grange on the south side of Edinburgh. In 1768 the inhabitants of Causewayside were infuriated to find their way barred to the lands over which they had walked from time immemorial.¹

Pedestrians were not the only people to be affected by the enclosure of commons, for some of the great drove roads, which saw the passing of thousands of head of cattle, were routed across certain commonties, both burgh and non-burgh. The commonties of Sanquhar, Dumbarton, Reddingrigg, Whitesiderigg and Falkirk Muir all had drove roads passing through them.² The last three provided the venue of the great cattle market which came to be known as the 'Falkirk Tryst'.³ The legal proceedings for the division of the commonties of Reddingrigg and Whitesiderigg took place between 1761 and 1772 and resulted in the market having to move, first to a site called Rough Castle to the west of Falkirk, and then to Stenhousemuir near Larbert.⁴ The only other case of a common being used to stage a fair was on St Boswell's Green, Roxburghshire, on which the local laird retained the right of holding a fair annually over the 40 acres of the common.⁵

1. SRO. Dick y. Tennent and ors. (UP. Innes Mack. D/4/4)

2. RHP. 1667, 3889

5. NSA. iii, 108

3. Haldane, A.R.B., Drove Roads of Scotland, London, 133-49

4. SRO. Forbes y. Feuars of Falkirk (EP. Dur. 19/12/1807);
RHP. 4042

A Plan of the
Part of the Duke of Whols

Part of the Duke of Whols
Land.

AUCHTER

West Mains	120 2 10
Whitefold	106 2 5
West Torden	128 3 7
Middle Torden	130 1 10
Weather Torden	86 0 7
Weather Torden E.	83 0 0
Newbarning	138 1 39
Kirkhill	40 1 18
West Kirktown	101 0 14
Common with	12 1 01
East Kirktown	73 3 08
Clarkeingyre	46 8 31
Portulloch	110 1 28
Castle mains	84 3 05
Boreland Parks	124 1 08

Common Moor

West Mains. **WHITEFOLD**
OF West KIRKTOWN

THE
BORELAND CASTLE MAINS
Parks
West KIRKTOWN
East K

Explanation.

- AA The Town of Auchterarder
- B The Church
- C The Manse
- D Part of the Glebe
- E The old Church yard & Small Park part of Glebe
- F Part of Glebe
- G The Mill
- H A Stone bridge of horse & foot



Part of the Duke
OF M

Evolution of the park

If the burgh commons were protected by the 1647 and 1695 Acts from the acquisitive interest of outside bodies, mainly the landed aristocracy, they were under considerable pressure from the burgh's oligarchy. As has already been shown, woven throughout the records of the Scottish burghs is a theme of continuous attrition of the common lands, usually for peppercorn rents. Rouming, souming and feuing were all represented, although the latter predominates. Failing these, the burghs could and did resort to specific Acts of Parliament, similar to those that were raised for dividing English commons. The division of the burgh lands of the small royal burgh of Falkland, the commonry of the Lomonds of Falkland, was accomplished by this method.¹ An Act of Parliament, however, did not always lead to division. The common muir of Auchterarder, Perthshire, was placed in the hands of commissioners by Act of Parliament.² Under the powers conferred by the Act the moor was reclaimed and brought into cultivation (Plate 38). Again, a division could be achieved under the auspices of judicial arbitrators, as was the case in the division of the burgh muir of Dumbarton.

1. See Directory, 117

2. 23 & 24 Vict. cap. cxix, 1697-1704

3. See Directory, 94-95

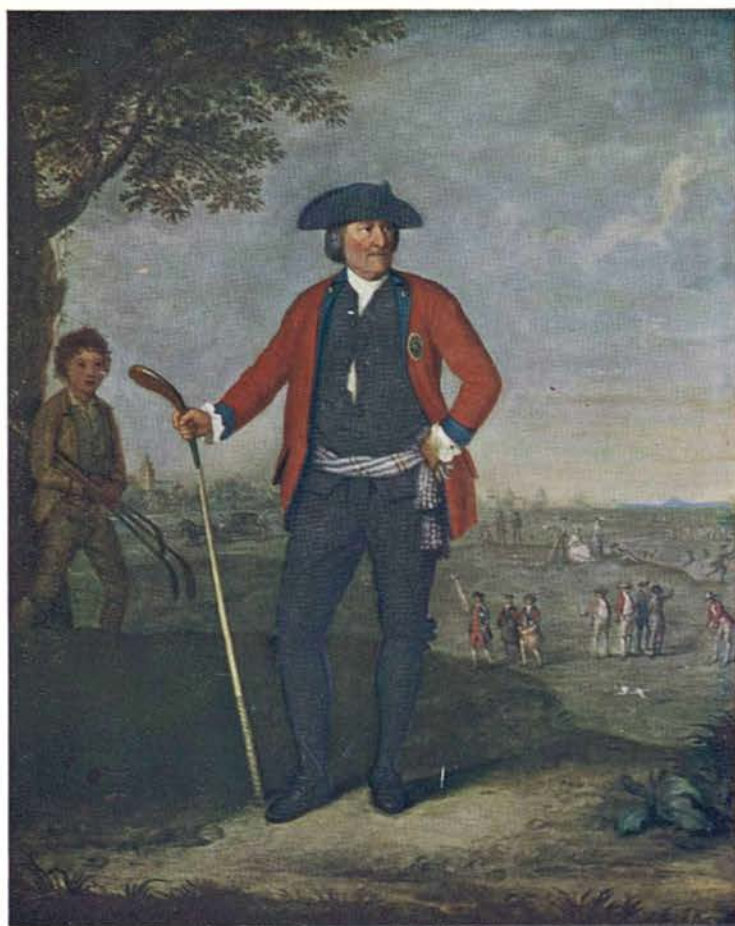


Plate 39. William Inglis on Leith Links, as Captain of the Honourable Company of Edinburgh Golfers; by David Allan (Scottish National Gallery, Edinburgh)

What saved the few remaining burgh commons in the end was simply pressure of population. This rather paradoxical premise is based on two factors: firstly, the increasing growth of the town led to a breakdown of the subsistence agriculture practised by many townsmen, which was replaced by a complex marketing system that allowed the large urban population to be fed from much wider sources. This allowed the ground to be given over to new functions that were purely urban in character - building land, roads, markets and recreation. Secondly, the rapid expansion of buildings, often tenements, led the townsman to desire open spaces where he could resort for recreation. Thus congested conditions stimulated a desire for light and space and with it the concept of the urban park dawned.

This surge of public opinion was the natural outcome of the conditions of the industrial and urban revolution of the late eighteenth and nineteenth centuries. Congestion, squalor, pollution, dirt and lack of basic services were the conditions bred in towns which were being transformed from market towns to industrial cities. Even before the industrial revolution, people recognised the benefits of open spaces, as will be seen in the examination of Dundee's open spaces. Early in the eighteenth century golf was played on Bruntsfield and Leith Links, Edinburgh, the old quarry holes providing convenient bunkers (Plate 39). Yet this use of open spaces in or close to the city did not develop into a national concept until the Victorian reformers introduced legislation to protect the remaining commons and purchased land to create parks.

In 1833 Parliament produced a report 'on the best means of securing open spaces in the vicinity of populous towns as public walks and places of exercise'. It recognised that the rapid growth of towns had become a national problem with the industrial revolution. The report went on to recommend the creation of parks out of the existing burgh lands. It was not only aesthetic reasons that appealed to the legislators, but also the financial benefits that could accrue from the creation of a park. A house overlooking a burgh common is regarded to have an amenity value that is worth stressing (Plate 40).

Evening News and Dispatch, Wednesday, Nov. 23, 1966

2 Melville Street, CAL 7424

GLENGYLE TERRACE

Spacious maindoor and garden Flat looking on to Bruntsfield Links: 9 rooms (2 with washhand basins); 2 bathrooms; modernised kitchen (with Aga water heater); ample cupboards; service lift; walled back garden; rateable value £107. fee-duty £9 19s 3d. Cards to view, and further particulars from GORDON, FALCONER & FAIR-WEATHER, W.S., 32 Castle Street, CAL 5784.

BRUNTSFIELD, DUNDEE

Plate 40. Even in the present day an outlook onto a burgh common is thought to be of value (Edinburgh Evening News and Dispatch, 23rd November, 1966)

1. Charters, Writs and Documents of the Royal Burgh of Dundee, the Hospital and Johnston's Bequest: 1292-1850, Dundee, 1850,

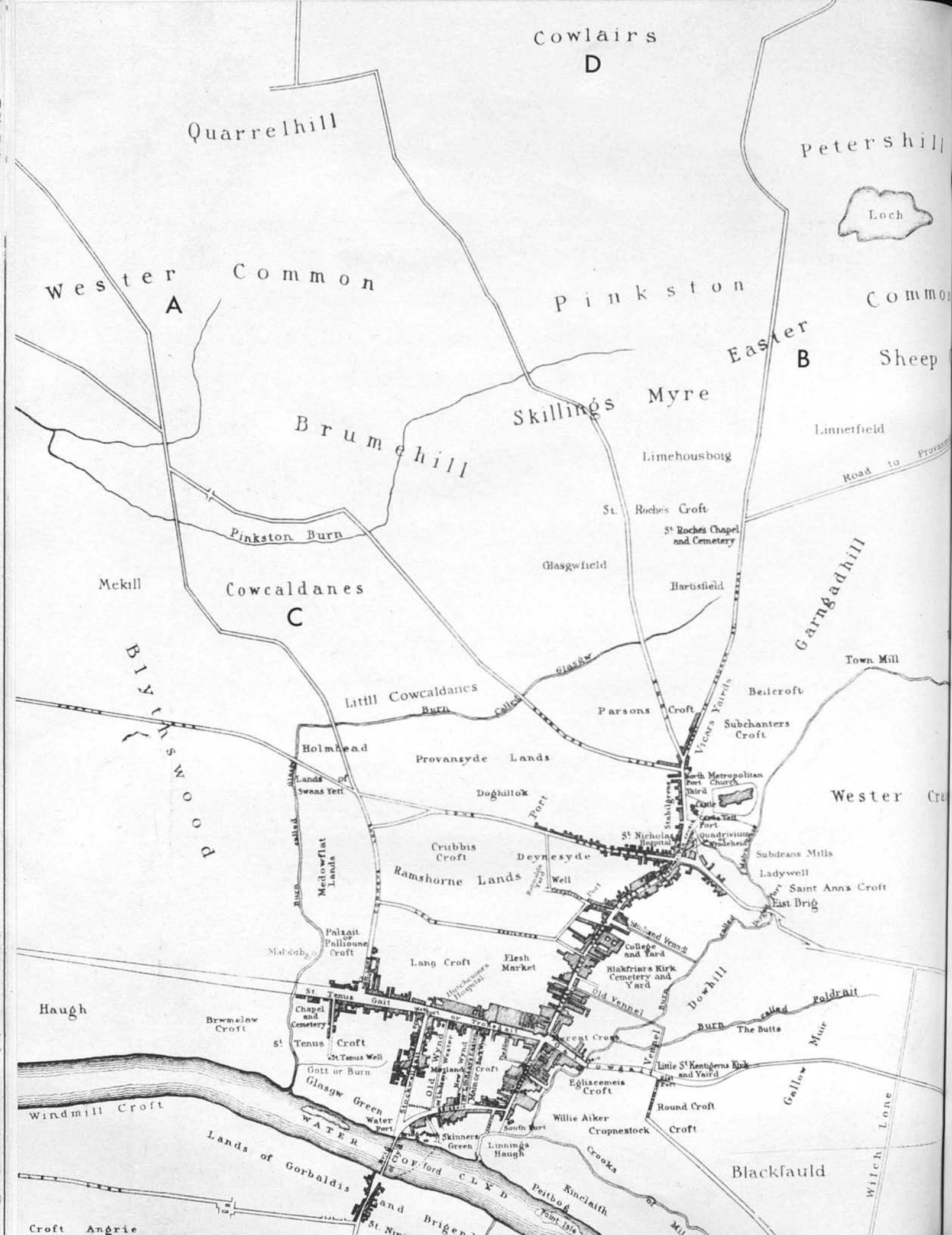
The provision of parks, in any urban area, depended on the availability of land which had not been built upon. Firstly, the few remaining acres of burgh commons had to be salvaged; in the case of Glasgow, this was down to a mere twenty acres of the Laigh Green. Secondly, there was the active purchase of land, which could be an extremely costly business, as events in both Dundee and Glasgow will illustrate.

Evolution of Dundee's parks

There are two large parks in Dundee, Magdalen Green and Law Hill, which form a considerable contrast to each other. The former consists of a raised beach beside the Firth of Tay, and the latter is a prominent volcanic boss rising to 572 ft O.D. As early as 1678 the inhabitants of Dundee had vindicated their rights of walking over, parading on and using the Magdalen Green for recreation purposes, while the proprietor of Blackness had the right of solum and pasturage of the Green.¹ Just under two hundred years later, in 1871, the Commissioners of Police, with powers under the Improvement Act, acquired the Green as a park and they subsequently purchased the proprietor of Blackness's rights of solum and pasturage.²

The acquisition of Law Hill proved to be a much more difficult process. Although the inhabitants of Dundee had used the hill from time immemorial for walking upon, a considerable dispute

1. Charters, Writs and Documents of the Royal Burgh of Dundee, the Hospital and Johnston's Bequest: 1292-1880, Dundee, 1880,



arose when they tried to establish a stronger claim than this. Therefore the town, with considerable wisdom on its part, offered to buy the hill and its surroundings, amounting to thirteen acres, for £1,138.¹ The situation was complicated because the Law for many years had been used as a quarry, especially on the north flank. The town council recognised that the continued working of these quarries would be a considerable danger to those who frequented the park and therefore decided to buy the quarries for £2,750. In the short run this proved to be a good investment, for some of this capital was recouped by continuing to work the quarry at a profit!

Glasgow's Burgh lands

The burgh muirs of the city of Glasgow provide an ideal example of the changes of function and vicissitudes that burgh commons have undergone. The earliest known record of burgh lands is found in a grant to the bishop of Glasgow which was made in 1450.² In it, he was granted the lands called the Bishop's

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1. Charters, Writs and Documents of the Royal Burgh of Dundee, the Hospital and Johnston's Bequest: 1292-1880, Dundee, 1880, 228
 2. Marwick, Sir James D. (ed.), Charters and other Documents relating to the City of Glasgow A.D. 1175-1649, Edinburgh, 1894, vol. i, part ii, 28
-

Plate 41. A reconstruction of a map of Glasgow in 1650 showing
 A: Wester Common B: Easter Common C: Cowcaldanes
 D: Cowlairs E: Common lone (After Sir James Marwick)

Forest, extending to the north and west of the city for some distance, the exact boundaries of which are not known (Plate 41). From its name it must not be inferred that it was all in wood, for the term was frequently applied, as it still is, to ranges of land set apart and having privileges for the preservation of game. A portion of the original forest appears to have survived as late as 1795, for in a description of the newly founded village of Anderson it is reported that it "is bounded on the north by the wood of Blytheswood, the only remains of a forest formerly belonging to Glasgow".¹

Under ecclesiastical administration, the inhabitants were allowed to use those parts of the Forest close to the town for common pasturage and for casting peats. Prior to the Reformation there seem to have been four commons around the city - Easter and Wester Commons, the Burgh Muir and the district known as Garngad Hill.² In 1568 the magistrates took possession from the Church, amongst other things, of the common lands and proceeded to dispose of them amongst the inhabitants. A contemporary letter tells how 'all the burrow muir of Glasgow on the south syde of the towne, ar distribuit by the provost, baillies and communitie of towne to the inhabitants thair of, every ane his own portion conforme to his degrie ...'³

1. Gordon, J.F.S. (ed.), Glasgow Ancient and Modern, Glasgow, 1872, iv, 1123

2. Macgeorge, A., Old Glasgow, Glasgow, 1888, 168-9

3. Op. cit., 169

It appears, however, that the division was not so equitable as the letter makes out, for in 1576, some eight years later, the magistrates were petitioned 'for the luf ye bear to God and the common weel of our toune' not to alienate any more of the common lands, so necessary as pasture 'for the sustaining of our babies'.¹ For the next two hundred years there was a continual process of feuing out the remaining common lands, until the Easter Common appears on a nineteenth-century plan as a mere field-name adjacent to the Monkland Canal at St Rollox, on the verge of being obliterated for ever.² The price paid for the burgh lands, often only nominal sums, left the town in a precarious position for meeting future debts. In 1747 the magistrates sold between thirty and forty acres of Wester Common to John Young, a tailor, at a price of £130 and a feu-duty of £1 13s 4d.³ Again, in 1764 the magistrates sold to Hugh Tennent, a gardener, 'the town's lands and muir of Easter Common consisting of 42 acres', for a payment of a feu-duty of only £10.⁴ These two examples record not only the trifling sums paid for these lands but also the sale of the last remnants of the Easter and Wester Commons.

It is necessary to turn to the banks of the Clyde in order to find a survival of the burgh lands of Glasgow. For a long period after the haugh lands beside the River Clyde had become the property of the burgh, they appear to have been little used, for

1. Macgeorge, A., Old Glasgow, Glasgow, 1888, 169

2. RHP. 125

3. Macgeorge, A., Old Glasgow, Glasgow, 1888, 169

4. Ibid.

the Laigh Green, as it was known, lay so low as to be affected by every spring-tide. From 1638 to 1661 many improvements were made to the Green to render it of use to the town. It was enlarged by purchase of adjacent properties, including the runrigs of Craignestock, which were renamed Carlton Green. 'Senex'¹ has suggested that these improvements were made only to compensate for the alienation of the more valuable Wester Common.²

In 1730 a public washing-house was erected with a lead taken from the Camlachie Burn (Plate 42). This essentially functional feature was later surrounded by a formal park which, according to contemporary newspaper reports, suffered from considerable vandalism. Skinner's Green, the western portion of Glasgow Green, was used for many years by the tanners for drying their hides. Flesher's Haugh, consisting of twenty-six acres, was acquired in 1782 for £4,000, a figure which contrasts markedly with the selling prices thirty years earlier.

At the beginning of the nineteenth century, Glasgow Green formed the only park in Glasgow. From contemporary descriptions few people must have been brave enough to take the air within its bounds:

1. Robert Reid

2. Senex, Glasgow Past and Present, Glasgow, 1884, iii, 55

Plate 42. Plan of Glasgow in 1764 showing A: Herd's house
B: Washing house C: Slaughter house D: Skinners' Green

'The watercourse connected with the Washing-House was often so stagnant during the summer months as to become offensive to the citizens. The banks contiguous to Peat Bog were so rugged and wasted down by springs that they were not only offensive to the eye but completely useless. The Laigh Green lay so low, and was so irregular in its surface, that a slight swell on the river or a smart shower laid it under water, which had to be carried off to the Camlachie Burn by an open drain. The entries to the Laigh Green by the Saltmarket Street, Cow Lane, and the Old Bridge were so narrow, irregular, and dirty, from their vicinity to the Slaughter-House, that, with the exception of the first, they were chiefly used by cattle and fleshers' dogs ... the bottom of the Laigh Green was surrounded by offensive pits, used by skimmers and tanners. The Slaughter-House spread over a large and irregular surface on the bank of the river, and was bounded by crooked lanes on the north and northeast parts, than which there was no other entry to the Green from the west.

The dung of the Slaughter-House and the intestines of slaughter animals were collected in heaps, and allowed to remain for months together, till putrefaction took place, to the great annoyance of the neighbourhood. A glue-work, and a work in which tharm was manufactured from the intestines of animals in a recent state, was erected at the bottom of the Laigh Green; and to complete the nuisance, the adjoining houses were occupied for cleaning tripe; and rees were fitted up for the retail of coal and coal-culm. The space on the bank of the river at the cattle-market, came now to be used by the police as a receptacle for filth from the streets.'¹

By the middle of the nineteenth century Glasgow Green had become a pleasant park with borders of shrubs, open grass and gravel walks, but in 1858 all this was endangered when the council found itself short of funds after creating the West End Park.

1. Senex, Glasgow Past and Present, Glasgow, 1884, iii, 58-59

It was decided to exploit the coal measures beneath the Green and a motion was proposed 'that the Magistrates and Council should remit to the Committee on Finance to make the necessary arrangements for letting the coal in the Green by public roup'.¹ The outcry at this proposal prevented the implementation of the plan, and to this day Glasgow enjoys a green lung, somewhat neglected, in the midst of some of the most congested urban areas in Britain.

Evolution of Edinburgh's parks

Edinburgh possesses many fine open spaces - Princes Street Gardens, Calton Hill, Arthur's Seat, Bruntsfield Links, Leith Links, and the Meadows. Compared to Glasgow's 3430 acres of parkland out of a total 39,725 acres, Edinburgh is well endowed with over 7,000 acres of open space within a city area of 34,781 acres. When the comparison is extended to population, the disproportion is doubled, for Glasgow has more than twice the number of citizens. The survival of this multitude of open spaces within the city boundary reflects, not so much the good management of the magistrates and council, but rather the unco-operative geography of Edinburgh's situation. Ridge upon ridge separated by deep, ill-drained hollows offered little incentive for appropriation. Yet where the land was of value it was feued out for insignificant sums:

'By the improvident exercise of the powers conferred on the corporation by the charter of King James IV, avowedly for the purpose of improving the condition of the burgh, and increasing its immediate revenues, the far greater part of the territorial

1. Senex, Glasgow Past and Present, Glasgow, 1884, iii, 61



Plate 40. Map of the city of Edinburgh with list of lands held by the town in property or superiority (Scots Magazine, vol. 21, 1759)

THE
BURGH MUIR
of
EDINBURGH

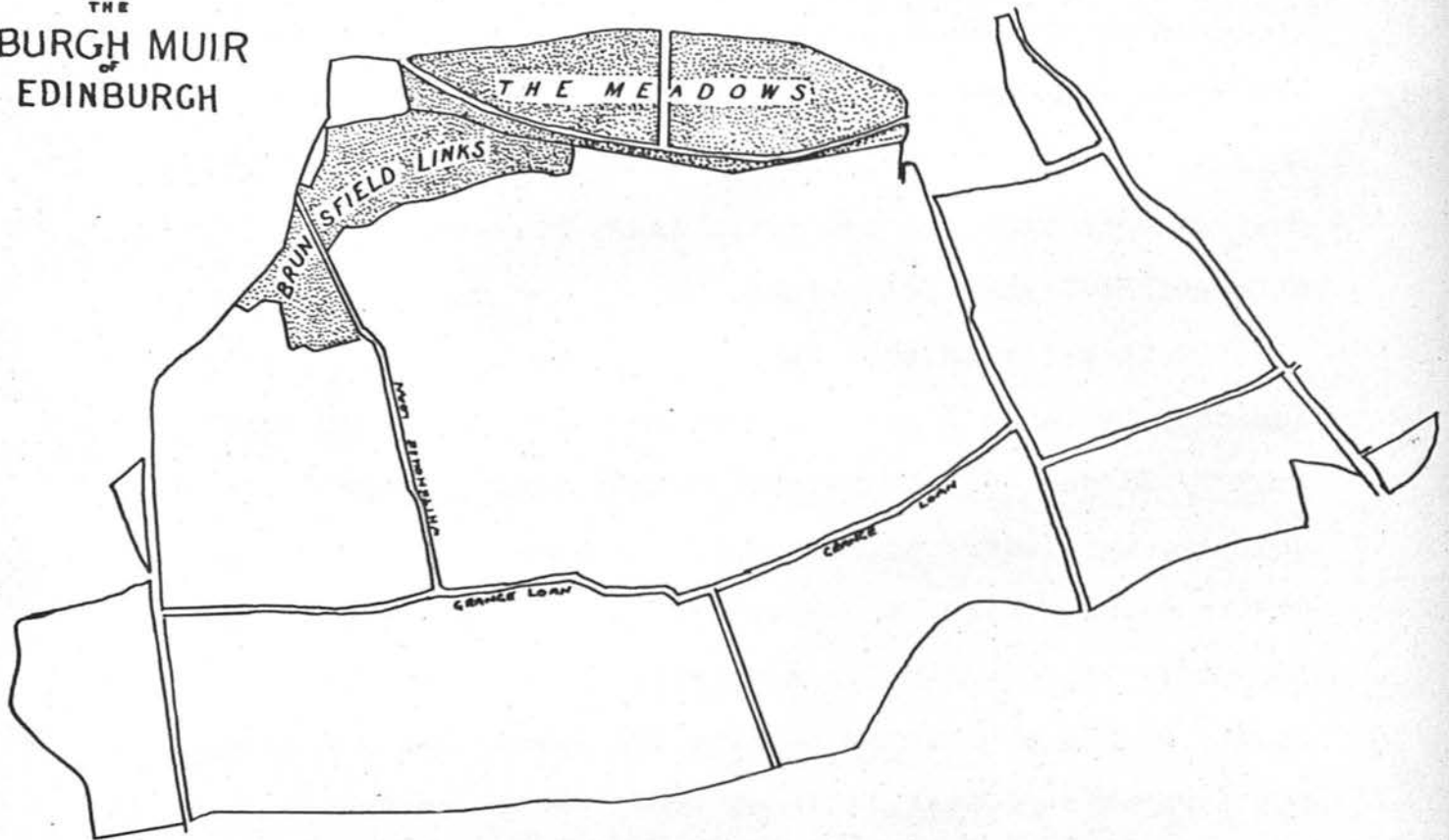


Fig. 15. The Burgh Muir of Edinburgh. The shaded area represents the public parks that remain to this day (After Moir Bryce)

Scale?

of Leith, Barefoots Parks (Princes Street Gardens), Calton and Calton Hill, Leith Wynd, Canongate, St Mary's Wynd, Pleasance, Potterrow, Bristo, Portsburgh, Bruntsfield Links and the Meadows (Plate 40). Bruntsfield Links played an important and varied part in Edinburgh's daily life. It was pastured up to the eighteenth century; quarries, which had reduced the surface to a wretched condition, provided a soft grey sandstone for building purposes; and it made an excellent golf course with the quarries as bunkers.¹ Golf had to be abandoned on the Links in the nineteenth century, as it had become too congested, but the centuries-old tradition is maintained by a short-hole course.

The Meadows, in contrast, formed part of the South or Burgh Loch lying in the shallow basin between the Lauriston and Grange ridges. During the sixteenth century the Loch became the main source of supply of water to the town and this function did not end until 1672 when water was brought through lead pipes from Comiston. The Loch was slowly drying out, supporting a great abundance of marsh grasses. Poor women would come out from the town to cut grass and collect birds' eggs. Soon, however, this meagre source of food was denied them, when in 1581 the council issued a proclamation 'that na gyrs women nor utheris pas within the South Loch to cheir the gyrs thairof, hary the burd nestis, tak away the eggis of the saming before Midsymmer nixt, under the payne of skurgein'.²

1. Bryce, W.M., 'The Burgh Muir of Edinburgh from the records', Book of the Old Edinburgh Club, x (1918), 240-52

2. Edinburgh Burgh Records, iv, 557

It was finally agreed in 1657 that the Loch should be drained and the council leased it to John Straiton, a burgess. It proved to be financially ruinous for Straiton, but the Loch ceased to exist and became known as Straiton's Park. The main period of improvement, during which the Meadows took on their present guise, was when Thomas Hope of Rankeillor held the lease from 1722 to 1779. He laid down the tree-lined walks across the still muddy bottom, but denied the public access for the Meadows themselves. Agitation for more recreation space increased and in 1743 a petition was presented to the town council that made 'a universal complaint that this metropolis was destitute of any public walk reckoned in other parts as so necessary to the policy of a great town, and so conducive to the health and pleasure of its inhabitants'.¹

The Morphology of city and common

Most of the burgh commons that have survived as parks in Scottish cities occupied sites which were unattractive for building purposes. Two broad categories of sites can be observed: first, the ill-drained site, often beds of old glacial lakes, bogs or riverside lands. Examples of these - Magdalen Green, Dundee, the Meadows, Edinburgh, and Glasgow Green - show that the fastest growing towns in Scotland were not able to absorb centrally located pieces of land, at least not until there was sufficient civic awareness to prevent this happening, because of the technological

1. Bryce, W.M., 'The Burgh Muir of Edinburgh from the records', Book of the Old Edinburgh Club, x (1918), 259

problems involved. The same is generally true of hard rocky outcrops which go to make the second category. Bruntsfield Links in Edinburgh and Dundee Law exemplify the difficulty in utilizing a rocky site other than for quarrying. Quarrying itself tended to perpetuate the common, for not only did it ruin the site for building purposes but it also provided an economic argument against building on the common.

Yet these unattractive sites could be and were turned to great advantage in the urban landscape. The concept of the park came at a time of rapidly expanding urban population in all the major towns of Scotland. As towns spread beyond their medieval bounds, the most favourable sites were rapidly built upon. In Edinburgh, the southern suburbs circumvented the Meadows so that the city dweller saw a vista of solid grey tenement surrounding a green park. At last, the importance of open walking space was apparent: no longer was the burgh common simply a continuation of the open countryside. It had at last achieved its own identity - a park.

Once it was seen that the park had an amenity value, any houses that were built tended to be of a higher quality than many in the immediate neighbourhood. To this day the sale of a house overlooking a park is given considerable stress. The green lungs which these parks provide can give a town a distinctive character. No one can deny that the grey, haunting, endless tenement-landscape of Glasgow is markedly unfavourable when compared with the grey, haunting, but not endless, tenement-landscape of Edinburgh. The sudden emergence onto a park or gardens was a keynote in Georgian planning. It was seen as creating a distinctive urban environment, not a crude imitation of peasant independence such as the concept

which spawned the garden city. Consequent failure of succeeding generations to carry on the Georgian tradition has resulted in the continuous urban sprawl which we know as suburbia. The green belt may have originated in the twentieth century, but the green lung is a legacy from much earlier times.

The burgh authorities, up to the late eighteenth and early nineteenth centuries, did not distinguish themselves in their management of common lands. Had they confined their inefficiencies to the letting town lands on short leases, no permanent damage to the town's resources would have done. But the lands were feued out for sums that, even at the time, were judged to be miniscule. In the foregoing description of individual towns' commons there is a universal theme of gross mismanagement by the men in power of the common good. This is only partially mollified by the considerable effort and money that the civic authorities of the nineteenth century invested in the creation of open spaces. To them we owe a debt of gratitude for salvaging our present-day parks.

In the congested urban environment, the pleasure afforded by the green refuge of our parks is most important. Often, a park is the field of the urban child. The legacy of our former town commons, that of close rapport between town and country, represents a verdant memorial in our over-growing cities.

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1. This figure represents the absolute minimum possible area of Scotland communities, excluding burgh commons and common grazing. Only lands with joint proprietorship have been included.
 2. Johnston, T. *The History of the Working Classes in Scotland*. Glasgow, 1929, 164.

CHAPTER VI

Conclusions

The commonities of Scotland played a significant part in everyday life up to the eighteenth century. Of the 19,063,231 acres of the land area of Scotland, some 453,521 acres are known to have been commonty.¹ It has been estimated that in the sixteenth-century fully one-half of the entire area of Scotland consisted of common land which included 'the commons of royal burghs, burghs which held their foundation rights from private individuals, the extensive commons of villages and hamlets, the common pasturages and grazings, and the commons attaching to run-rig tenancies'.² Even taking the former figure as a basis, the visual impact of one-fortieth of the country under this type of land use must have been considerable. Scotland's commons enhanced its reputation of having a wild, unkempt, bleak and doleful landscape.

For all of its appearance of being waste, the commonty was essential to the ordinary people, for it occupied an important part in the agricultural system. The infield lying immediately around the township was cultivated continuously, its fertility being restored by human and animal manure. From these small arable patches the tenant farmer contrived to get a meagre return of oats, barley or bere. A bit further out was the outfield, small arable

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1. This figure represents the absolute minimum confirmed area of Scotland commonities, excluding burgh commons and common grazing. Only lands with joint proprietors have been included.
 2. Johnston, T., The History of the Working Classes in Scotland, Glasgow, 1929, 164

patches, set amongst rough pasture. This land was never manured but cropped till exhausted, when new ground was turned up. A form of shifting cultivation, it allowed for natural regeneration of fertility under fallow. Both the infield and outfield were enclosed by the head dyke of the township which separated it from the commonty. The unfenced fields formed a constant temptation to the cattle and to prevent unwanted grazing three precautions were taken. Firstly, the cattle were in constant charge of a herd, usually a small boy or girl from the township. Sometimes there was a common herd who watched over all the cattle on the common, and this was invariably the case in town commons. Secondly, cattle were pastured far out in the commonty well away from temptation. This was one of the primary functions of the commonty in providing grazing throughout the months of the growing season, after which the cattle were brought back within the head dyke to graze on the stubble. Thirdly, the passage from the commonty to the township was a broad loan that sometimes broadened out at the edge of the hamlet into a small green which was used for milking. The pastoral function of the commonty extended beyond cattle to include sheep, horses and goats. On many commonties there was no limitation of stock that could be grazed, the natural bankruptcy of the country was the most important limiting factor.

Peat for fuel, for both high and low except those areas with coal outcrops, was provided universally by the commonties of Scotland. Much of the summer was spent cutting peat and the loss of this right was felt most strongly by the poorer farmer after division. The houses of the townships were made with materials taken from the common. The walls were made of stones and turf,

the roof was thatched with heather and the whole caked with clay to make it weatherproof. Even some towns were constructed of stone quarried in quarries on the common - Edinburgh, Thurso, Wick.

Certain commonities had an industrial function. Those of the north - Caithness, Orkney and Shetland - that lay on the coast provided seaweed for the kelp industry. Bleachfields were located on commonities. Quarries abounded - limestone, freestone, slate and whinstone - providing abundant building material. Chromate of iron ore was extracted in Shetland and iron ore from the bogs of Orkney. Streams draining the commonities were often used as watergangs for mills outwith their bounds.

Commonities were crossed by many roads, or rather tracks, that took the shortest route from point to point. This led to a multiplicity of tracks criss-crossing the common that was only rationalised at the time of division when a road pattern was laid out. Often drove roads passed through commonities which were used for overnight stopping places. The greatest cattle markets, at Crieff and Falkirk, were located on commons, and processes of division brought a premature end to these great gatherings. Other towns had rights to hold a fair on the common but these are remarkably rare for the royal burghs jealously guarded their trading rights and privileges.

The role played by the commonity in the largely subsistence economy was thus crucial for the bulk of the population. Their needs - food, fuel and shelter - were all provided from this source. As long as the subsistence economy continued the commonity was inviolable. However, the introduction of the profit motive, and the quest for efficiency that it entailed, meant that the

runrig system and commonities were rendered obsolete. The new agriculture based on the dispersed farmstead, the rectangular field, liming, cleaning the soil, hedges, ditches, shelter belts and improved stock and crops, led to the making of a rural landscape so utterly different that within a century the last remnants of the old system had all but disappeared. Few countries have experienced such a radical remoulding of the landscape. The commonity was one of the features that disappeared. With very few exceptions it is not possible to trace a commonity on the ground without the aid of original commonity plans.

The completeness of absorption of Scotland's commons is due to the effectiveness of the legislation that allowed for division of commonity. As we have seen, up to 1695 a considerable number of commonities were divided with the aid of existing legislation and co-operation of neighbouring proprietors. The desire to divide up to this date stemmed from heritors' wish to consolidate the rather untidy distribution of their estates in which land was intermingled, owned co-operatively and without regular boundaries. Although there were acts of Parliament enabling commonities to be divided, each division was essentially local in nature involving local proprietors, valuers and surveyors. Many have clearly gone unrecorded but the process of converting commonities to private property is sufficiently well documented from the twelfth to seventeenth century to indicate a continuous attrition of Scotland's commons so that those left after 1695 are but a remnant.

The Act of 1695 is the watershed for the division of commonities. After this date a cheap, ready method of division

was available to all who had property with right to a commonty. At no time was common usage recognised as a right to a commonty. This was alien to Scottish law but notwithstanding this fact many people, especially the cottars who used it without rights, looked upon it as 'common' property to be used at will. This, and the upheaval caused by the resettlement of townships and consolidation of farms, caused a certain degree of social unrest. Unfortunately, little was recorded from the displaced tenant farmer's point of view. But to him the division of commonties was just a small part of the change that was going on in all quarters.

The rate and time of division of commonties varied throughout Scotland. Dumfriesshire, Roxburghshire, and Peeblesshire had no commonties by the end of the eighteenth century. On the other hand, not a single commonty or scattald had been divided in Shetland until the nineteenth century. Whilst some counties tended to divide their commons very quickly, others saw only the odd commonty divided every now and then. Yet there was clearly a regional movement when it came to division. Often this was due to a few landowners bringing a series of actions in quick succession, as was the case of Dumfriesshire.

Once the commonty had proved intolerable to the landowner, rapid division ensued. Articulate public opinion, coming from the land-owning classes, was unanimous in condemning commonties. On occasion, however, there is sufficient evidence to show considerable disquiet on the part of the cottar. He saw his free fuel, cheap grazing, source of building materials and other prerequisites, available at the cost only of his labour, vanish with the division of the commonty. A new landless class, no

longer being able to subsist on a small plot, was created and caused a considerable redistribution of population.

The rural landscape was also altered. The various allocations, laid down by the land surveyor, tended to become incorporated as visual objects on the landscape. The division of the commonity of Hassendean is an excellent example of the process (see Part III). At the same time the road pattern was reorganised at the time of division. The haphazard track was replaced by the hedged road running straight across the countryside, adding to the already geometrical landscape of division.

The commons belonging to royal burghs formed a separate class of common land. These lands were part of the common good of the burgh as well as playing a vital role in the rural economy of the town. Rudimentary communications made towns much more self-reliant: food, fuel, building material were found within the bounds of the burgh common. The burgh common provided the venue for other matters: weaponschawings, common ridings, gallows, fairs and golf took place at one time or another.

With the onset of the industrial revolution and the great era of urban expansion, the few remaining acres of burgh commons took on a new lease of life. The park evolved as a place of recreation within the bounds of the town. This brought to an end a long history of dissipation of the burgh commons.

The use of Register House plans to solve the problem of the fate of Scotland's commons turned out to be a fruitful choice. The abundance of commonity plans is a reflection of the absence of commons on the Scottish scene, because the demise of a commonity always involved the production of a plan. This thesis has tried

to answer the question, what happened to Scotland's commonties? The answer is that they have all been divided. Only by examining these unique plans has it been possible to come to this conclusion.

Barony: a former division of a Scottish county, corresponding to the English 'hundred'

Baulk: a permanent strip of furrow separating two rigs, and commonly consisting of coarse grass, weeds and stones

Bers: a poor type of barley

Chain: a Scots chain was equal to 74 or 74.4 Imperial feet

Commissioner: person appointed by the Court of Session to act by himself on the Court's behalf in the vicinity of the commonty to be divided

Cottar: a smallholder who possessed a cottage and yard, grass for a cow and perhaps a horse, and was granted some perquisites in exchange for services performed for his master

Cottown: a cluster of dwellings possessed by cottars or sub-tenants

Croft: this is an ambiguous term as it has taken on a new connotation in the Highland counties. It is now used to indicate a small farm in which the farmer has outside interests. In the eighteenth century it was applied to the arable lands adjacent to the farmtown which received manure and were more intensively cultivated than the outfield.

dict: A day on which no legal business can be transacted

divot: turf or peat

drove road: a track along which cattle were driven to the major cattle markets (or Trysts) and thence to England

Dyke: an enclosure wall built of loose stones (dry stone dyke) or turf

Ell: Scottish unit of measurement. An ell = 37.0598 Imperial inches

GLOSSARY

- Acre: an acre Scots was equal to 1.26 Imperial acres
- Barony: a former division of a Scottish county, corresponding to the English 'hundred'
- Baulk: a permanent strip of furrow separating two rigs, and commonly consisting of coarse grass, weeds and stones
- Bere: a poor type of barley
- Chain: a Scots chain was equal to 74 or 74.4 Imperial feet
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- diet: a day on which no legal business can be transacted
- divot: turf or peat
- drove road: a track along which cattle were driven to the major cattle markets (or Trysts) and thence to England
- Dyke: an enclosure wall built of loose stones (dry stane dyke) or turf
- Ell: Scottish unit of measurement. An ell = 37.0598 Imperial inches

- Execution: completion of a legal instrument
- Fall: 18.5 Imperial feet, lineal measure, the equivalent to an English pole
- Fauld: division of outfield land, manured by grazing sheep or cattle
- feal: turf used for construction of houses or for manure
- Fermtoun: in lowland Scotland this signified a hamlet whose inhabitants were limited by their co-operative husbandry, or by their joint possession of the same farm unit
- Feu: a perpetual lease granted in return for fixed annual rent
- Glebe: agricultural land attached to a church living and held by incumbent during his tenure
- Head-dyke: the dyke constructed at the upper limit of cultivation
- Head room: a part of the commonty used exclusively by the proprietors adjacent to it
- Herd: a person who tends cattle, sheep, etc.
- Heritor: landholder in a parish
- Infield: croft
- Kelp: large kind of brown seaweed, the burnt ashes of which yield iodine
- Kirkton: a hamlet with a church or 'kirk'
- Liberty: certain privileges conferred by prescription or grant
- Lint: flax, normally in raw or semi-finished condition
- Loan: a wide track linking a fermtoun to the commonty or common grazing
- Mains: farm attached to a mansion house
- March: boundary
- Marl: argilliferous limestone occurring as a superficial deposit
- Outfield: land remote from the fermtoun which was never manured, or sometimes, simply the poorer arable land of a farm
- Vicinage: common rights arising to neighbouring tenants of the

Out-freedom: the common pasture, lying outside the individually-occupied cultivated land, in Orkney

Pendicle: small holding generally possessed by a sub-tenant and lying on the fringes of a farm

Process: a whole series of steps taken in legal proceedings

Proprietor: land owner

Rig (= Ridge): a 'standard' rig was said to be a rood or a quarter of a Scots acre

Room-land: arable lands around townships in Shetland

Rundale: term applied to runrig, especially in the Borders

Runrig: the intermixture of rigs possessed or tenanted by several persons

Sasine: a Scottish legal document conferring possession of land

Scat: the land tax paid by a udal tenant in Orkney and Shetland

Scattald: common land in Shetland

Servitude: a burden affecting land in Scots law

Shielings (shealings): rough shelters for herds when looking after their cattle on remote pastures

Soum: letting of grazing rights for certain numbers of animals

Stell: sheep fold

Stoup-and-room: method of mining coal which involves leaving pillars of coal as props

Summons: a notice to appear before a judge in the Court of Session. The initiation of a legal action

Town: in eighteenth century this consisted of a small agricultural settlement, usually called fermtoun, kirketoun or milltoun

Udal: a form of land tenure, derived from Norse law, existing in Orkney and Shetland, in which land is held by right of uninterrupted possession and descends to all children equally

Usufruct: right to the use and profits of property belonging to another without damage to it or waste

Vicinage: common rights arising to neighbouring tenants of the

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